

**SPECIAL HANDLING**

No. 63-091

NEGOTIATED CONTRACT

Contract No. FI-5777

Fairchild Space & Defense Systems  
A Division of Fairchild Camera & Instrument Corporation  
Syossett, New York

Contract For: See Schedule

Fixed Price:

25X1A

Mail Vouchers to: Contracting Officer

Effective Date: 15 July 1963

This contract is entered into, by and between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and the above-named Contractor which is a Corporation, incorporated in the State of Delaware, hereinafter called the Contractor.

The parties hereto agree that the Contractor shall furnish the facilities and deliver all supplies and perform all the services set forth in the attached schedule issued hereunder, for the consideration stated herein.

The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule, Exhibit A and the General Provisions (AF basic agreement number AF 33 (657)-5087), as modified which together with this signature page and the accompanying certificate comprise this Contract No. FI-5777. In the event of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of 1723, 1963.

FAIRCHILD CAMERA & INSTRUMENT CORPORATION

BY

TITLE Vice President and Comptroller

THE UNITED STATES OF AMERICA

BY

Contracting Officer

25X1A

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SPILLAGE HAZARD

Contract No. FI-5777

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c. It is contemplated that the funds presently allotted to this contract will cover the work to be performed, as limited by the provisions of (b) above (until the 30th day of September 1963). In the event funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until the above date, or an agreed date in substitution thereof, the Contractor shall notify the Contracting Officer in writing when within the next thirty (30) days the work will reach a point which, in the event of termination of this contract pursuant to the clause hereof entitled: "Termination for the Convenience of the Government," the total amount payable by the Government (including amounts payable in respect of subcontracts and settlement costs), pursuant to Paragraph (e) thereof, will approximate eighty-five per cent (85%) of the total amount then allotted to the contract. The notice shall state the estimated date when such point will be reached and the estimated amount of additional funds required to continue performance to the above or an agreed substituted date. The Contractor shall, thirty (30) days prior to the date above written or agreed substituted date, advise the Contracting Officer in writing as to the estimated amount of additional funds which will be required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties. If after such latter notification, additional funds are not allotted by the date above written or by an agreed date in substitution therefor, the Contracting Officer will, upon written request of the Contractor for the same, terminate this contract on such date or the date set forth in the request, whichever is later, pursuant to the provisions of the clause of this contract entitled: "Termination for the Convenience of the Government."

d. When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree as to the applicable period of contract performance which shall be covered by such funds and the provisions of Paragraphs (b) and (c) above shall apply in like manner to such additional allotted funds and substituted date pertaining thereto and the contract amended accordingly.

e. If the Contractor incurs additional costs, or is delayed in the performance of the work under this contract, solely by reason of the failure of the Government to allot additional funds in amounts sufficient for the timely performance of this contract, and if additional funds are allotted an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of said items or in the time of delivery or both. Failure to agree to any such equitable adjustment hereunder shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled: "Disputes."

f. The Government may at any time prior to termination, and, with the consent of the contractor, after notice of termination, allot additional funds for this contract.

g. The Provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Government under the clause hereof entitled: "Default." The provisions of this clause are limited to the work on and allotment of funds for the items set forth in (a) above. This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

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h. Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the clause of the contract entitled "Termination."

PART V - WAIVER OF REQUIREMENTS OF GENERAL PROVISIONS

Notwithstanding the requirements of any of the General Provisions of this contract to the contrary, whensoever the Contractor, in performance of the work under this contract, shall find that the requirements of any of the clauses of the General Provisions are in conflict with security instructions issued to the Contractor by the Contracting Officer or by his duly authorized representative for security matters, the Contractor shall call the attention of the Contracting Officer to such conflict and the Contracting Officer or his duly authorized representative for security matters shall (i) modify or rescind such security requirement or (ii) the Contracting Officer shall issue to the Contractor a waiver of compliance with the requirements of the General Provisions conflicting with such security requirements. Any waiver of compliance with the General Provisions of this contract issued by the Contracting Officer shall be in writing, except that the approval by the Contracting Officer of any subcontract issued hereunder by the Contractor shall be deemed to constitute approval of waiver of any clauses of the General Provisions in conflict with the stipulations of such subcontract.

PART VI - SPECIAL SECURITY RESTRICTIONS

The Contractor shall not reveal (i) the specific nature or any details of the work being performed hereunder or (ii) any information whatsoever with respect to the department of the Government sponsoring this contract and the work thereunder except as the Contractor is directed or permitted to reveal such information by the Contracting Officer or by his duly authorized representative for security matters, and notwithstanding any clause or section of this contract to the contrary, the Contractor shall not interpret any clause or section of this contract as requiring or permitting divulgence of such information to any person, public or private, or to any officer or department of the Government without the express consent of the Contracting Officer or his duly authorized representative for security matters.

PART VII - AF BASIC AGREEMENT

Fixed Price Basic Agreement AF 33 (657)-5087 between the Contractor and the Government, dated 29 November 1962, is incorporated herein by reference with the following modifications:

- a. Clause 40, "Renegotiation", of Section A is deleted in its entirety.
- b. The following clauses only of Section B are included in this contract:  
B.1A, B.2, B.3, B.4, B.14, B.22, B.27, B.28 and B.41.
- c. All of Section D is included in this contract.

d. In clause B.14, "Progress Payments", the figure 80 is hereby inserted in the blank spaces designated A, B, C, D and E.

PART VIII - SPECIAL SUBCONTRACT CLAUSE

The Fairchild Space and Defense Systems is authorized to procure from its Semiconductor Division integrated circuits and/or Semiconductor devices on a fixed price basis, which subcontract shall contain the terms and conditions of a fixed price contract and will not be subject to inspection and/or audit, notwithstanding any other provision of this contract.

The Contractor agrees in conjunction with this clause that prices quoted are those quoted to most favored customers and in no event will exceed prices quoted to any other corporation. It is further agreed that the foregoing special subcontract clause shall be applicable only until another source is developed for the integrated circuits and/or Semiconductor device at which time competitive prices shall be obtained for these procurements.

PART IX - GOVERNMENT FURNISHED PROPERTY

The Government will provide the Contractor with the Government Owned Property contained in Exhibit B hereto.

PART X - TECHNICAL FIELD SUPPORT

Under a separate contract the Contractor will provide Technical Field Support in accordance with the Statement of Work, Field Engineering Services, designated FES No. 1, dated 25 September 1963.

PART XI - GOVERNMENT FACILITIES

The fixed price in Part III of this schedule is based upon the use by the Contractor of the existing secured work area, Government furnished film and the transfer of 'A' prime residual inventory.

PART XII - TRANSPORTATION COSTS

The Government will reimburse the Contractor for transportation costs incurred by the Contractor in shipping deliverable items FOB Destination. The Contractor will submit paid shipping invoices to the Government for reimbursement thereof.

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*No. 63-079*  
*30 August 1963*

EXHIBIT A  
STATEMENT OF WORK  
DESIGN, DEVELOPMENT AND FABRICATION  
OF  
"A" FOLLOW-ON NUMBER 2  
SATELLITE MAPPING CAMERA SUBSYSTEM

Page 1 of 11 Pages  
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### 3.0 DESIGN

- 3.1 FSIDS shall have the total responsibility for development and design of the "A" Follow-On Nr. 2 camera subsystem according to the above Design Control Specification per paragraph 2.3 and consistent with the applicable requirements set forth in the SE "A" Program Requirement Specification per paragraph 2.1.
- 3.2 Design changes and/or changes to specifications which affect the functional configuration of the subsystem or interface between contractors shall be submitted to SE for review, and to the Program Office for approval.
- 3.3 In order to achieve maximum benefit from previous programs, existing designs shall be used wherever possible, provided they are optimum for the anticipated mission. No fundamental changes shall be made except through approved technical directives.
- 3.4 FSIDS shall insure, in coordination with A/P, that all changes to the camera system and its ground support system are designed with regard to the limitations and capabilities of the personnel who will assemble, checkout, repair, operate camera subsystem and assist in compatibility tests.
- 3.5 FSIDS shall insure in coordination with SE Field Engineering and/or SE Quality Assurance, that prior to first article acceptance testing, all subsystem or interface drawings, specifications, data sheets, and procedures are compatible and conform to established A/P, SE and Program Office policies and procedures.

### 4.0 PRODUCTION

- 4.1 FSIDS shall design and fabricate four (4) mapping cameras and cassettes in the "A" Follow-On Nr. 2 subsystem configuration in accordance with the Design Control Specification referenced in paragraph 2.3 of this document.

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- 4.2 FSDS shall fabricate and furnish E' clocks (P/N 1089B1) for use in the camera subsystem. The Shutter Timer, connecting harness, and other components shall be compatible with the E' clock.
- 4.3 FSDS shall furnish spares in accordance with the following:
  - 4.3.1 On or before ninety (90) days after authorization to proceed, FSDS shall furnish the Systems Engineering Contractor with seven (7) copies of a production list containing the part number, description, and quantity of those parts deemed necessary by FSDS to support the equipments after shipment from New York considering the delivery schedule. This list shall indicate those long lead-time items already released to support the equipment.
  - 4.3.2 If, within thirty (30) days from the date of submission, the Systems Engineering Contractor and the Program Office has neither approved nor disapproved all the items contained in such production lists, those items shall be deemed to have been authorized for provisioning purposes. In the event items are disapproved by the Program Office, procurement activity shall be terminated where necessary.
- 4.4 Ground support equipment shall be modified as defined in Section 6.0.
- 4.5 FSDS shall inspect existing film spools and supply spool support structures, and refurbish as required.

#### 5.0 TESTS

FSDS shall provide facilities, materials, security and services necessary to perform qualification tests on previously unqualified components and subsystems as well as acceptance tests on each deliverable article. This function also embraces such additional and special tests as are normally required, such as feasibility tests, functional breadboards, engineering analysis, etc.

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- 5.1 FSDS shall perform Inspection and Acceptance Tests in accordance with Specification Nr. ATSL015-4012 and the following:
  - 5.1.1 Inspection of the material to be delivered from FSDS shall be at a level deemed necessary by FSDS and approved by the Government to insure performance. FSDS shall provide additional inspection services in the event performance verification or rework is necessary to such material after acceptance and delivery. FSDS shall also verify that no damage in transit has occurred to its material after shipment from one facility to another. FSDS will be responsible for any damage incurred in shipment from FSDS facility to destination in accordance with Clause 6 of the General Provisions.
  - 5.1.2 Final acceptance of equipment and materials to be delivered shall be at FSDS. The Systems Engineering Contractor and other Program Office representatives will be notified five (5) days prior to the beginning of final acceptance tests. These tests shall be administered in accordance with the approved Acceptance Test Procedures. Requests for waivers on end item equipment deliveries shall be submitted to SE for recommendation, and to the Program Office for approval. The execution of a DD Form 250, which will contain concurrence signature of the Program Office representative, shall constitute final acceptance. Copies of the DD Form 250 will be forwarded to the Contracting and Finance Officers.
- 5.2 Review of component fabrication and testing will be conducted jointly between FSDS and SE Field Quality Assurance prior to the first article production phase of the program.
- 5.3 SE and the Program Office shall monitor all acceptance tests.

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- 5.4 FSDS shall notify SE and the Program Office of pending tests, to assure adequacy of test coverage.

6.0 GROUND SUPPORT EQUIPMENT

FSDS shall utilize previously built support equipment for complete camera subsystem tests. In view of the substantial investments in this type of equipment, existing handling, test, checkout, and calibration equipment will be used, either directly, by modifications which were previously developed on prior programs, or by such additional modification as may be required for compatibility with the "A" Follow-On Nr. 2 subsystem.

7.0 REQUIRED DOCUMENTATION AND REPORTING BY FSDS

7.1 Publications

FSDS will append the existing previously delivered manuals describing the complete satellite mapping camera subsystem operation, field maintenance, and checkout. The form and extent shall be such as to bring the existing manual into clear accord with the "A" Follow-On Nr. 2 subsystem. FSDS will furnish to SE, one (1) reproducible master and ten (10) printed copies of the appendices to the existing manual. Delivery of these appendices shall be no later than the delivery of the first subsystem unit.

7.2 Engineering Drawing List

A list indicating FSDS Engineering Drawings shall be forwarded to SE and maintained in an up-dated condition.

- 7.3 FSDS shall prepare and furnish to SE all acceptance and qualification specifications as required. Modifications to the existing approved system acceptance and qualification specifications shall be approved by the Systems Engineering Contractor.

- 7.4 FSDS shall furnish to SE such drawings, schematics and specifications necessary to accomplish system

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integration and maintain proper interface between associate contractors.

- 7.5 FSDS shall furnish the following reports and attend required meetings as follows:
  - 7.5.1 Weekly TWX progress report - to be forwarded to SE and Program Office on Wednesday and shall report schedule status and significant highlights of development for the preceding week - ending Saturday.
  - 7.5.2 System Engineering Meetings shall be held approximately once each month, normally at A/P and FSDS-New York alternately. Such meetings shall be chaired and minutes prepared and distributed by the Systems Engineering Contractor. All Associate Contractors shall present such briefing aids and data as required. SE shall set the date and place for all meetings, with approval of the Program Office. A recommended agenda will be furnished the Program Office at least one week prior to each meeting for review and approval.
- 7.6 FSDS shall prepare and furnish three (3) copies of all qualification and/or special test reports within 15 days after completion of testing.
- 7.7 FSDS shall provide the Systems Engineering Contractor documentation with each mapping camera subsystem as follows:
  - 7.7.1 Mapping Camera Subsystem Logbook.
  - 7.7.2 Mapping Camera Subsystem Electrical Schematics as wired (three copies each).
  - 7.7.3 Calibration data (three copies each).
  - 7.7.4 Acceptance Test Reports (three copies each).

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7.8 Reports and Monitoring

All acceptance test results and failure analyses shall be submitted promptly to SE and to the Program Director for review and analysis.

7.9 Repairs, modifications and malfunctions not resulting in failure shall be reported promptly and in detail to SE and the Program Office.

8.0 ADMINISTRATION

8.1 Program Management and Systems Engineering and Technical Direction

8.1.1 Program management and technical direction shall be provided by SAFSP through the SP-11 Program Office, as the agent for all interested agencies of the Government. The SP-11 Program Office will be the single day-by-day point of contact with the Contractor.

8.1.2 The function of the Systems Engineering Contractor is as specified in "Operating Procedure for Systems Engineering and Technical Direction", SP3-279, Revision A, dated 10 June 1963, which forms a part of this Statement of Work.

8.2 Management Liaison

FSDS shall provide full and complete coordination required to ensure satisfactory completion of "A" Follow-On Nr. 2 project phases within schedule and contractual requirements.

9.0 EQUIPMENT FURNISHED TO THE GOVERNMENT BY FSDS

Delivery Summary - FSDS shall deliver the work called for above in accordance with the following schedule. Unless otherwise specified, acceptance and inspection shall be at FSDS's plant for shipment to be made F.O.B. destination.

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**SPECIAL HANDLING****10.0 MATERIALS AND SERVICES FURNISHED BY THE GOVERNMENT**

The Government shall furnish or cause to be furnished, the items listed below:

**10.1 Film**

There shall be supplied to FSDS, 5" film to meet requirements for testing and operational checks. Specific amounts and types of film are to be determined by FSDS for use in New York testing and by A/P for West Coast system test and actual final use as early in the program as possible, but in sufficient time to allow the Government to furnish same to Contractor's schedule. This will normally be a 90-day lead-time item.

**10.2 Access to all test and operational telemetry data reflecting the performance of the camera subsystem, as required.****10.3 FSDS will be furnished and is also authorized to use on a no-charge-for-use basis, such items of special tooling, test equipment, ground handling equipment, ground support equipment, and facilities generated under previous "A" Program contracts, without jeopardizing active contracts.****10.4 Gold foil shall be supplied to FSDS by the A/P associate. Quantity to be limited to 20 pcs 24 x 48 x .002 inches adhesive backed tape, coated with 10 microinches of evaporated gold.****11.0 PACKAGING AND SHIPMENT**

FSDS shall utilize residual camera transit cases and supply spool support structures. Existing cassette transit cases will also be used. A/P will make these necessary transit cases available to FSDS.

**11.1 Shipment is F.O.B. destination via such carriers and to such destinations as may be designated by the Program Office.****11.2 Spares shall be shipped F.O.B. destination for maintenance of accountability in a Stores Area. The parts shall be available to FSDS Field Engineering and Flight Support Group to replace those parts as may be necessary to certify flight readiness of the camera subsystems.****SPECIAL HANDLING**

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EXHIBIT B

<u>Raw Glass</u> <u>PECO P/N</u>	<u>Description (Type of Glass)</u>	<u>Quantity</u>
548-1001	LAK-17	7
1002	BASF-10	7
1003	LF-19	15
1004	BAF-8	6
1004	BAF-8 Partially Fabricated (NG)	1
1005	EK-448	4
1005	LF-19	14
1006	LAK-17	2
1007	LAK-17	4
1007	LAK-17 Partially Fabricated	1
1008	EK-448	5
1008	LF-19	14
1009	SF-5	7
1010	EK-448	6
1010	LF-19	17
1010	LF-19 Partially Fabricated	2
1011	SSK-8	7
1012	LAK-17	7

<u>Tools &amp; Fixtures</u> <u>PECO P/N</u>	<u>Description</u>	<u>Quantity</u>
T-548-1013-1	Drill Jig	1
1013	Arbor	1
1016	Arbor	2
1017-1	Form Tool	1
1018	Arbor	1
1019	Arbor	1
1020-2	Form Tool	2
1021-1	Form Tool	1
1022-1	Form Tool	1
1023	Arbor	1
1024-1	Form Tool	1
1028	Arbor	1
1013	Lathe Fixture	2
1016	Lathe Fixture	2
1017	Lathe Fixture	1
1018	Lathe Fixture	1
1019	Lathe Fixture	2
1020	Lathe Fixture	1
1021	Lathe Fixture	1
1022	Lathe Fixture	1
1023	Lathe Fixture	1
1024	Lathe Fixture	1
1025	Lathe Fixture	1

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Tools & Fixtures (Cont.)

<u>PECO P/N</u>	<u>Description</u>	<u>Quantity</u>
T-548-1026	Lathe Fixture	1
1027	Lathe Fixture	1

Finished Parts - Glass & Metal

<u>PECO P/N</u>	<u>Description</u>	<u>Quantity</u>
548-0011	Filter Assembly - Red	2
0012	Filter Assembly - Yellow	2
1057	Mount Filter Cell	1
1027	Mount Filter Cell	5
1029	Cover Front	3
1032	Adapter - Cover	3
1033	Cover - Rear	4
1034	Barrel - Mehanite	1

Finished Parts & Castings

<u>PECO P/N</u>	<u>Description</u>	<u>Quantity</u>
548-1016	Cell #1, 60% Compl.	1
1013	Barrel Mehanite Casting	1
1020	Retainer - Filter	20
1027	Mount Filter Cell	3
1034	Barrel - Aluminum	6

TEST EQUIPMENT

- A. D&A Rack - Item 7 - Units 3 and 4 "Deliverable"  
 DD-250 Partial #34  
 Shipped 4/12/63  
 Crates Marked: 7-5-A 1/9 to 9/9: 7-5B 1/9 to 9/9  
 Weight and cubage not available but cubage could be 100 cu. ft.
- B. D&A Rack - Item 7 - Units 1 and 2 "In House"  
 DD-250 Partial #28 Unit 1  
 DD-250 Partial #29 Unit 2  
 Shipped 10/5/62  
 Markings: Unit 1 - 7-5-A-2/9 Weight 72 lbs. Cube 5.6 ft.  
 Unit 2 - 7-5-A-2/9 Weight 61 lbs. Cube 6.6 ft.
- C. Residual Inventory Item No. 1659  
 National Co. Atomichron Model NC-1001A

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Basic Agreement No. AF33(657)-5087

25X1A

Initiator:

UNITED STATES AIR FORCE

Fixed-Price Basic Agreement with FAIRCHILD CAMERA AND INSTRUMENT CORPORATION

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B 2

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B 4

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SECTION A - GENERAL PROVISIONS

Except as otherwise provided in applicable clauses of other Sections hereof the following clauses shall be deemed to be incorporated in and form a part of every contractual instrument entered into between the United States Air Force with the Contractor whenever such instrument or document states that this Basic Agreement applies.

Standard Form 32  
SEPTEMBER 1961 EDITION  
GENERAL SERVICES ADMINISTRATION  
FED. PROC. REG. (41 CFR) 1-16.101

## GENERAL PROVISIONS

(Supply Contract)

### 1. DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

- (a) The term "head of the agency" or "Secretary" means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.
- (b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.
- (c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

### 2. CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

### 3. EXTRAS

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

### 4. VARIATION IN QUANTITY

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

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### 5. INSPECTION

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this contract: *Provided,* That in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this

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contract, acceptance shall be inclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(c) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

#### 6. RESPONSIBILITY FOR SUPPLIES

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

#### 7. PAYMENTS

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000 or 50 percent of the total amount of this contract.

#### 8. ASSIGNMENT OF CLAIMS

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim

arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

#### 9. ADDITIONAL BOND SECURITY

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

#### 10. EXAMINATION OF RECORDS

(The following clause is applicable if the amount of this contract exceeds \$2,500 and was entered into by means of negotiation, but is not applicable if this contract was entered into by means of formal advertising.)

(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding \$2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

#### 11. DEFAULT

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) if the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) if the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity,



fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(e) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the Contractor or subcontractor pursuant to the provisions of paragraph (c) of this clause, such notice of default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause. *(Except as otherwise provided in this contract, this paragraph (e) applies only if this contract contains such clause.)*

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

## 12. DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard

and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

## 13. NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT

The provisions of this clause shall be applicable only if the amount of this contract exceeds \$5,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of litigation against the Government on account of any claim of patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or service performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such litigation. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

## 14. BUY AMERICAN ACT

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10 a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "end products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) a "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a) (iii) (B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) which are for use outside the United States;

(ii) which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) as to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) as to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

## 15. CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

## 16. EIGHT-HOUR LAW OF 1912—OVERTIME COMPENSATION

This contract, to the extent that it is of a character spec-

ified in the Eight-Hour Law of 1912, as amended (40 U.S. Code 324-326) and is not covered by the Walsh-Healey Public Contracts Act (41 U.S. Code 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said Law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day; and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause, and all penalties thus imposed shall be withheld for the use and benefit of the Government.

#### 17. WALSH-HEALEY PUBLIC CONTRACTS ACT

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

#### 18. NONDISCRIMINATION IN EMPLOYMENT

*(The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity issued pursuant to Executive Order No. 10925 of March 6, 1961 (26 FR 1977).)*

In connection with the performance of work under this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective-bargaining agreement or other contract or understanding,

a notice, to be provided by the agency Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under this Nondiscrimination clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Nondiscrimination clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The Contractor will include the provisions of the foregoing paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### 19. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

#### 20. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### 21. UTILIZATION OF SMALL BUSINESS CONCERNS

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

\* 22. FEDERAL, STATE, AND LOCAL TAXES (AUG. 1961).

(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and—

(1) results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(2) results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Government, as directed by the Contracting Officer. The contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.

(c) No adjustment of less than \$100 shall be made in the contract price pursuant to paragraph (b) above.

(d) As used in paragraph (b) above, the term "contract date" means the date set for bid opening, or if this is a negotiated contract, the contract date. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government upon the request of the Contractor shall, without further liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax; provided that, evidence appropriate to establish exemption from any Federal excise tax or duty which may give rise to either an increase or decrease in the contract price will be furnished only at the discretion of the Government.

(f) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the Contracting Officer.

23. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT. (Jan. 1961)—(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;

(vii) use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; provided, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with the certification prescribed by the Contracting Officer. Such claims shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(i) for completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b) (vii) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) the total of—

(A) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e) (i) hereof;

(B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above); and

(C) a sum, as a profit, equal to 2% of that part of the amount determined under (A) above which represents the cost of articles and materials not processed by the Contractor, plus a sum equal to 8% of the remainder of such amount, but the aggregate of such sums shall not exceed 6% of the whole of the amount determined under (A) above; provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (i) and (ii) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e) (i) and (ii) (A) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (vii).

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs set forth in Section XV, Part 2, of the Armed Services Procurement Regulation, as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer

has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

**24. GOVERNMENT-FURNISHED PROPERTY.** (Nov. 1961)—(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event the Government-furnished Property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon the written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by the decrease, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) Title to the Government-furnished Property shall remain in the Government. Title to Government-furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty. The Contractor shall comply with the provisions of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation) as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.

(d) The Government-furnished Property shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government-furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible,



and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

(f) (If this contract has been entered into as the result of Formal Advertising, this provision shall be applicable in lieu of provision (f) below.) Unless otherwise provided in this contract, the Contractor, upon delivery to him of any Government-furnished Property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.

(The following provision (f) is Applicable to Negotiated Contracts except those contracts involving Government-furnished Property relating to labor surplus area or small business set-asides for which the provision (f) for advertised contracts shall apply.)

(f) (1) Except for loss, destruction or damage resulting from a failure of the Contractor due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of the Government-furnished Property, as required by paragraph (e) hereof, and except as specifically provided in the clause or clauses of this contract designated in the Schedule, the Contractor shall not be liable for loss or destruction of or damage to the Government-furnished Property—

(i) caused by any peril while the property is in transit off the Contractor's premises, or

(ii) caused by any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils:

(A) Fire; lightning, windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any Government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces; or by an agent of any such Government, power, authority, or forces; or

(B) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

The perils as set forth in (i) and (ii) above are hereinafter called "excepted perils."

This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to the Government-furnished Property while in his possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government-furnished Property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of his managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) all or substantially all of the Contractor's business;

(ii) all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed;

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(2) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government-furnished Property caused by any excepted peril.

(3) Upon the happening of loss or destruction of or damage to any Government-furnished Property caused by an excepted peril, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government-furnished Property from further damage, separate the damaged and undamaged Government-furnished Property, put all the Government-furnished Property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) the lost, destroyed and damaged Government-furnished Property;

(ii) the time and origin of the loss, destruction or damage;

(iii) all known interests in commingled property of which the Government-furnished Property is a part; and

(iv) the insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be reimbursed for the expenditures made by him in performing his obligations under this subparagraph (3) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement.

(4) With the approval of the Contracting Officer after loss or destruction of or damage to Government-furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government-furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-furnished Property in accordance with the provisions of this contract, the Government-furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-furnished Property, caused by an excepted peril, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government-furnished Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government-furnished Property for the benefit of the Government.

(7). If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

(g) The Government shall at all reasonable times have access to the premises wherein any Government-furnished Property is located.

(h) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-furnished Property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government-furnished Property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(i) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

25. SUBCONTRACTS.—No contract shall be made by the Contractor with any other party for furnishing any of the completed or substantially completed articles, spare parts, or work, herein contracted for, without the written approval of the Contracting Officer as to sources.

★ 26. SUBCONTRACTS. (Nov. 1961)—If this contract provides for price redetermination, or contains incentive provisions, the following provisions shall apply to subcontracts in lieu of Clause 25 above:

(a) As used in this clause, the term "subcontract" includes purchase orders.

(b) Except as provided in paragraph (d) below, the Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract which—

- (i) is on a cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of \$10,000, including any fee; or
- (ii) is proposed to exceed \$25,000 or five per cent (5%) of the total amount of this contract; or
- (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate, are expected to exceed \$25,000 or five per cent (5%) of the total amount of this contract.

(c) The advance notification required by paragraph (b) above shall include:

- (i) a description of the supplies or services to be called for by the subcontract;
- (ii) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;
- (iii) the proposed subcontract price, together with the Contractor's cost or price analysis thereof, including current, complete, and correct cost or pricing data accompanied, except when the requirement is specifically waived by the Contracting Officer, by a certificate from the subcontractor to the effect that all cost or pricing data has been considered by the subcontractor in preparing his proposal and that such data is current, and has been provided the Contractor; and
- (iv) identification of the type of contract proposed to be used.

(d) Advance notifications of subcontracts, as required by paragraph (b) above, are not required for any subcontract (i) not on a cost-plus-a-fee, time and material, or labor-hour basis, if the Contracting Officer has in writing approved the Contractor's purchasing system and the subcontract is within the limitations of such approval, or (ii) consented to in writing by the Contracting Officer as a proposed subcontract prior to the execution of this contract.

(e) The Contractor shall not, without the prior written consent of the Contracting Officer, enter into any subcontract for which advance notification to the Contracting Officer is required by this clause; provided that, in his discretion, the Contracting Officer may ratify in writing any subcontract and such ratification shall constitute the consent of the Contracting Officer required by this paragraph.

(f) No consent by the Contracting Officer to any subcontract or any provisions thereof or approval of the Contractor's purchasing system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to relieve the Contractor of any responsibility for performing this contract, unless such approval or consent specifically provides otherwise.

(g) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

27. **INSPECTION AND AUDIT.** (Jul. 1948) (Applicable to Negotiated Contracts only.)—(a) The Contractor agrees that his books and records and his plants, or such part thereof as may be engaged in the performance of this contract shall at all reasonable times be subject to inspection and audit by any authorized representative of the Department.

(b) The Contractor shall cause a like provision to be included in all subcontracts hereunder.

28. **DISCOUNTS.**—In connection with any discount offered, as may be set forth in the Schedule, time will be computed from date of the delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at those points, or from date correct invoice or voucher (properly certified, if the contract so provides, by the Contractor) is received in the office specified by the Government if the latter date is later than the date of delivery. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing of the Government check.

29. **SHIPMENTS.** (Oct. 1957)—(a) Unless otherwise provided in this contract or unless the Contracting Officer acting under the "Changes" clause hereof directs in writing otherwise, all supplies to be furnished under this contract shall be delivered f.o.b. carrier's equipment at the plant or plants at which such supplies are to be finally inspected and accepted, or if the facilities for shipment by carrier's equipment are not available at the Contractor's plant, f.o.b. the point or points nearest thereto that carrier service is available. When the carrier's equipment is rail, any shipment occupying sufficient space in a railroad car to constitute a carload shipment subject to carload freight rates shall be properly and adequately loaded in freight cars by the Contractor, and any shipment subject to less-than-carload freight rates shall be delivered by the Contractor into the carrier's possession at the Contractor's plant, or at the point or points nearest thereto at which delivery can be effected.

(b) Whenever it is provided in this contract that supplies shall be delivered f.o.b. specified destinations, such supplies shall be shipped direct by the Contractor to the specified destinations on commercial bills of lading, at the expense of the Contractor. Provided, however, that nothing contained herein shall preclude reimbursement of the Contractor by the Government of any such transportation expenses if this is a cost-reimbursement type contract.

(c) Notwithstanding other provisions of this contract, shipments made under cost reimbursement contracts which do not exceed (i) 1000 pounds if shipped by rail, truck, or freight forwarder, or (ii) 100 pounds if shipped by railway express, or (iii) 50 pounds if shipped by commercial air, shall be made by commercial bills of lading, charges to destination(s) paid by the Contractor.

(d) If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be delivered to a carrier for shipment from a point other than specified in this contract, equitable adjustment shall be made in the contract price in the manner provided in the general provisions of this contract entitled "Changes."

(e) **Shipping Instructions.** If not otherwise provided herein, names of consignees of all supplies to be delivered by the Contractor hereunder will be furnished in writing by the Contracting Officer at a later date. Request therefor shall be made to such address as the Contracting Officer may direct, not later than thirty (30) days prior to the date on which any of the articles are ready for shipment.

(f) **Routing Instructions.** If not otherwise provided herein and deliveries are other than f.o.b. specified destinations, Government routing instructions will be furnished to the Contractor in writing by the Contracting Officer at a later date. If the Government routing instructions have not been received by the Contractor thirty (30) days prior to date on which any of the articles are anticipated to be ready for shipment, request therefor shall immediately be made to the cognizant transportation activity specified herein.

(g) **Notice of Shipments.** (Jul. 1949) At the time of delivery of any shipment of supplies to a carrier for transportation, the Contractor shall give prepaid notice of shipment to the consignee establishment, and to such other persons or installations designated by the Contracting Officer, in accordance with instructions of the Contracting Officer. If such instructions have not been received by the Contractor at least 24 hours prior to such delivery to a carrier, the Contractor shall request instructions from the Contracting Officer concerning the notice of shipment to be given.

(h) **Computation of Delivery Time.** For the purpose of determining the fulfillment of this contract so far as delivery dates are concerned, in the event the delivery point or points are not the same as the point or points of destination, the time of delivery of the supplies shall be the date of delivery to the carrier ready for shipment to destination.

(i) **Shipments by the Government.** Unless this is a cost-reimbursement type contract, any articles, supplies or other items to be delivered by the Government to the Contractor shall, unless otherwise provided herein, be delivered to the Contractor f.o.b. carrier's equipment at the plant or plants of the Contractor designated, or if facilities for shipment by carrier's equipment are not available at the Contractor's plant or plants, f.o.b. the point or points nearest thereto that carrier's equipment is available.

(j) Where the contract provides that inspection and acceptance shall be accomplished at a subcontractor's plant (whether in whole or in part) the foregoing provisions, except paragraphs (e) and (f), shall be equally applicable to such subcontractors as provided in said subcontract. Subcontractors' shipping instructions and routing instructions, if not previously furnished, shall be requested from the Prime Contractor.

\* 30. **GOVERNMENT BILL OF LADING.** (Jul. 1961) When it is provided in this contract that the supplies shall be delivered other than f.o.b. specified destinations, shipment(s) will be made on a Government Bill of Lading. The required number of such Government Bills of Lading will be furnished to the Contractor by the cognizant transportation activity. The Contractor shall acknowledge receipt of these Government Bills of Lading in the manner prescribed. As shipments are made, the Contractor shall prepare and distribute the applicable Government Bills of Lading in accordance with AFLC Form 232, "Instructions for Processing U. S. Government Bill of Lading." The Contractor also agrees that Government Bills of Lading in excess of the requirements of this contract will be returned to the cognizant transportation activity within a reasonable time after final shipment. The use of U. S. Government mailing indicia is authorized in lieu of U. S. Government bills of lading when commodity, weight, and cube permit movement within the U. S. Postal Service.

31. **MILITARY SECURITY REQUIREMENTS.** (Jun. 1958) (a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" including "Confidential—Modified Handling Authorized" or higher—



(b) The Government shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) To the extent the Government has indicated as of the date of this contract or thereafter indicates security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within his own organization in accordance with the requirements of—

(i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility and representatives of the Contracting Military Department shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause in this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding the last sentence of paragraph (e) of this clause.

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

**32. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES.** (Sep. 1958)—(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

**33. ADDITIONAL INSPECTION REQUIREMENTS.** (Jun. 1958)—(a) The Contractor shall inform the inspector when supplies are ready for inspection.

(b) The respective points for final inspection and acceptance by the Government of all the supplies (other than aircraft to be flown away, if any) to be furnished under this contract shall be, in addition to the plant or plants of the Contractor specified elsewhere herein, any other plant or plants of the Contractor or any plant or plants of a subcontractor or vendor of the Contractor hereunder, provided that such other plant or plants of the Contractor or such plant or plants of a subcontractor or vendor shall have been approved for such purpose in writing by the Contracting Officer. It is expressly understood by the Contractor that request by him for the approval referred to in the preceding sentence must be made as soon as practicable to permit the Government to make necessary arrangements for inspection and acceptance, and that the Government is not obligated to make such final inspection and acceptance at any point so approved until a reasonable period after such approval.

(c) The Contractor shall, in the manufacture of the articles to be supplied under this contract, be required to use jigs, fixtures, and/or other devices and appliances in all processes where such use is conducive to interchangeability and uniformity of the product, of such character as will reduce the necessity for selective assembly to the least practicable minimum, and whenever the inspector shall determine that any jig, fixture, device, or other appliance is incorrect, worn, damaged, or defective to such an extent as to adversely affect basic interchangeability of the article manufactured, he shall so inform the Contractor in the same manner as applied to the rejection of defective material presented for acceptance by the Government representative, and the Contractor shall not thereafter use the said jig, fixture, or appliance in its incorrect, worn, damaged, or defective form in the manufacture of articles intended for delivery under this contract.

(d) Unless otherwise provided herein, if any aircraft are required to be furnished to the Government hereunder and the same are to be flown away, such aircraft shall be finally inspected and accepted by the Government at a flying field or fields to be approved by the Government in the vicinity of the Contractor's plant or plants specified elsewhere herein or in the vicinity of any other plant or plants of the Contractor approved for such purpose in writing by the Contracting Officer. Unless otherwise provided herein, such inspection and acceptance shall be accomplished in accordance with the provisions of Specification No. MIL-A-8730 (USAF), as in effect on the date of this contract.

**34. GRATUITIES.** (Mar. 1952)—(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding

or amending, or the making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

35. **DELAY IN DELIVERY OF DATA.**—(a) It is understood that the efficient use by the Government of the supplies called for hereunder requires that the data called for hereunder be delivered not later than the time or respective times herein specified. If such data is not delivered at said time or times, the Government may at its election, so long as such data remains undelivered, unless the delay in delivery thereof arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause hereof entitled "Default," withhold payment to the Contractor for any of the amounts then due, refuse approval of the Contractor's vouchers and refuse to accept further deliveries hereunder from the Contractor or take any other action authorized by law or regulation now or hereafter in effect including termination of the contract for default to the extent and in the manner authorized by said clause, and may take any or all of the foregoing actions separately or in combination.

(b) The provisions of this clause shall only be applicable to technical data, such as handbooks, service manuals, or other information necessary for the proper maintenance or servicing of the end items called for herein.

36. **SUPERSEDING SPECIFICATIONS.** (Jul. 1948)—(The provisions of this clause shall be applicable if the Contractor is required by this contract to comply with any Government specification.) All references in any Government specification incorporated herein to other Government specifications shall be deemed to include all specifications supplementary to or superseding the specifications so referred to, to the extent that such supplementary or superseding specifications are in effect at the date of Contractor's latest quotation, if the Contractor was furnished or otherwise notified of the existence of such supplementary or superseding specification at the time of said quotation.

37. **QUALITY CONTROL SYSTEM.** (Oct. 1960)—The Contractor shall provide and maintain a quality control system acceptable to the Government for the supplies covered by this contract. The system of quality control shall be in accordance with Military Specification MIL-Q-9858, U.S. Air Force Bulletin No. 515, Control of Nonconforming Supplies and U.S. Air Force Bulletin No. 520, Calibration and Certification of Measuring and Testing Equipment, as in effect on the date of this contract. The provisions of this clause shall be inapplicable if this contract is one of the types specified in paragraph 1.2 of referenced specification.

38. **AUTHORIZATION AND CONSENT.** (Jan. 1961)—The Government hereby gives its authorization and consent (without prejudice to its rights of indemnification, if such rights are provided for in this contract) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The Contractor's entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in the contract and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

39. **PRIORITIES, ALLOCATIONS, AND ALLOTMENTS.** (Jan. 1961)—The Contractor shall follow the provisions of DMS Regulation 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to fill this order.

40. **RENEGOTIATION.** (Oct. 1959)—(a) To the extent required by Law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951, as amended.

★ 41. **UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS.** (Feb. 1962)—(The provisions of this clause shall be applicable if the contract is in excess of \$5,000.00.) It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) persistent labor surplus area concerns which are also small business concerns; (ii) other persistent labor surplus area concerns; (iii) substantial labor surplus area concerns which are also small business concerns; (iv) other substantial labor surplus area concerns; and (v) small business concerns which are not labor surplus area concerns.

**42. LIMITATION ON WITHHOLDING OF PAYMENTS.** (Sep. 1958)—If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; **provided**, that this limitation shall not apply to—

- (i) withholdings pursuant to any clause relating to wages or hours of employees;
- (ii) withholdings not specifically provided for by this contract; and
- (iii) the recovery of overpayments.

★ **43. INTEREST** (Feb. 1962)—Notwithstanding any other provision of this contract, unless paid within 30 days all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest at the rate of six percent per annum from the date due until paid, and shall be subject to the adjustments as provided by Part 6 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract, (ii) the date of the first demand for payment, (iii) the date of a supplemental agreement fixing the amount, or (iv) if this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

**44. Alterations**—(a) **Clause 11—Default**—is hereby revised by adding the following sentence at the end of paragraph (d):

“The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.”

(b) **Clause 13—Notice and Assistance Regarding Patent Infringement**—is hereby revised to read as follows:

**“13. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT.** (Feb 1962)  
—The provisions of this clause shall be applicable only if the amount of this contract exceeds \$10,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.”

(c) **Clause 14—Buy American Act**—is hereby amended by adding the words “or Canada” after the words “United States” and before the word “exceeds” in the sixth line of paragraph (a) (iii) on page 3.

(d) Clause 1 - Definitions - of the General Provisions is hereby amended by adding after paragraph (c) the following paragraphs:

"(d) The terms 'this contract', 'the contract price', 'hereunder', and other similar terms shall be deemed to mean the contractual instrument in which the terms of this basic agreement are incorporated by reference.

(e) The term 'the Schedule' wherever appearing herein shall be deemed to mean the Schedule in the contractual instrument in which the terms of this basic agreement are incorporated by reference."

(e) Clause 2 - Changes - of the General Provisions is hereby amended by deleting the figure "30" appearing in the fifteenth line and substituting in lieu thereof the figure "60".

(f) Clause 11 - Default - (as revised by paragraph (a) above) is hereby further revised by changing paragraph (e) to read as follows:

"(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause."

(g) Clause 18 - Nondiscrimination In Employment - is hereby revised to read as follows:

In connection with the performance of work under this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Nondiscrimination in Employment clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity in effect as of the date of this contract.

(e) The Contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Nondiscrimination in Employment clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The Contractor will include the provisions of the foregoing paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor.\* The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. (U)

\* The President's Committee on Equal Employment Opportunity interprets the first sentence of paragraph (g) to mean that the Contractor will include the provisions of the foregoing paragraphs (a) through (f) in every first-tier subcontract or purchase order, so that such provisions will be binding upon each such subcontractor or vendor, and will require each first-tier subcontractor or vendor similarly to include the provisions of paragraphs (a) through (f) in any subcontract or purchase order which he places, unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order 10925 of March 6, 1961.

(h) Clause 26 - Subcontracts - of the General Provisions is hereby amended by adding after the first word "provisions" in the second line the words "or is a letter contract".

(i) Clause 35 - Delay in Delivery of Data is hereby revised to read as follows:

"35. DATA - WITHHOLDING OF PAYMENT (Apr. 1962)

If 'Subject Data' (as defined in the clause of this contract entitled 'Data'), or any part thereof, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may, until such data is delivered or deficiencies are corrected, withhold payment to the Contractor of ten percent (10%) of the contract price unless a lesser withholding is specified in the schedule. Payments shall not be withheld nor any other action taken pursuant to this clause where the Contractor's failure to make timely delivery or to deliver data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause hereof entitled 'Default'. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract."

(j) Clause 16 - Eight-Hour Law of 1912- Overtime Compensation - of the General Provisions is hereby revised to read as follows:

"16. WORK HOURS ACT OF 1962 -- OVERTIME COMPENSATION

This contract, to the extent that it is of a character specified in the Work Hours Act of 1962 (Public Law 87-581, 76 Stat. 357-360) and is not covered by the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and to all other provisions and exceptions of said Work Hours Act of 1962.

(a) No Contractor or subcontractor contracting for any part of the contract work shall require or permit any laborer or mechanic to be employed on such work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible for such violation shall be liable to any affected employee for his unpaid wages. In addition, such Contractor or subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of forty hours in a workweek without payment of the required overtime wages.

(c) The Contracting Officer may withhold, or cause to be withheld, from moneys payable on account of work performed by the Contractor or subcontractor, the full amount of wages required by this contract and such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in paragraph (b). "

45. COMPETITION IN SUBCONTRACTING (Apr. 1962)

The Contractor shall select subcontractors (including supplies) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

SECTION B - SPECIAL PROVISIONS

The clauses set forth in this Section shall become a part of any contractual instrument entered into between the United States Air Force and the Contractor, if agreed upon by the said parties and incorporated by specific reference. Only those clauses specifically referred to shall become a part of such contractual instrument.



the meanings set forth below:

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(i) The term "Subject Invention" means any invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice either—

(A) in the performance of the experimental, developmental, or research work called for or required under this contract; or

(B) in the performance of any experimental, developmental, or research work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded; provided that the term "Subject Invention" shall not include any invention which is specifically identified and listed in the Schedule for the purpose of excluding it from the license granted by this clause.

(ii) The term "Technical Personnel" means any person employed by or working under contract with the Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts are set forth in (g), (h), and (i) below) who, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions.

(iii) The terms "subcontract" and "subcontractor" mean any subcontract or subcontractor of the Contractor, and any lower-tier subcontract or subcontractor under this contract.

(b) (1) ~~The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, non-transferable, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method. Such license includes the practice of Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method, or in the performance of any service acquired by or for the Government or with funds derived through the Mutual Security Program of the Government or otherwise through the Government. No license granted herein shall convey any right to the Government to manufacture, have manufactured, or use any Subject Invention for the purpose of providing services or supplies to the general public in competition with the Contractor or the Contractor's commercial licensees in the licensed fields; but provided however that the restriction of this sentence shall not be applicable in respect to any services or supplies which the Government has heretofore or may hereafter provide as a governmental function pertaining to general public health, safety, or welfare.~~

(2) With respect to:

(i) any Subject Invention made by other than Technical Personnel; and

(ii) any Subject Invention conceived prior to, but first actually reduced to practice in the course of, any of the experimental, developmental, or research work specified in (a) (i) above; and

(iii) the practice of any Subject Invention in foreign countries; the obligation of the Contractor to grant a license as provided in (b) (1) above, to convey title as provided in (d) (ii) (B) or (d) (iv) below, and to convey foreign rights as provided in (e) below, shall be limited to the extent of the Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. Nothing contained in this Patent Rights clause shall be deemed to grant any license under any invention other than a Subject Invention.

(c) The Contractor shall furnish to the Contracting Officer the following information and reports concerning Subject Inventions which reasonably appear to be patentable:

(i) a written disclosure promptly after conception or first actual reduction to practice of each such Invention together with a written statement specifying whether or not a United States patent application claiming the Invention has been or will be filed by or on behalf of the Contractor;

(ii) interim reports at least every twelve months, commencing with the date of this contract, each listing all such Inventions conceived or first actually reduced to practice more than three months prior to the date of the report, and not listed on a prior interim report, or certifying that there are no such unreported Inventions; and

(iii) prior to final settlement of this contract, a final report listing all such Inventions including all those previously listed in interim reports.

(d) In connection with each Subject Invention referred to in (c) (i) above, the Contractor shall do the following:

(i) if the Contractor specifies that a United States patent application claiming such Invention will be filed, the Contractor shall file or cause to be filed such application in due form and time; however, if the Contractor, after having specified that such an application would be filed, decides not to file or cause to be filed said application, the Contractor shall so notify the Contracting Officer at the earliest practicable date and in any event not later than eight months after first publication, public use or sale.

(ii) if the Contractor specifies that a United States patent application claiming such Invention has not been filed and will not be filed (or, having specified that such an application will be filed thereafter notifies the Contracting Officer to the contrary), the Contractor shall:

(A) inform the Contracting Officer in writing at the earliest practicable date of any publication of such Invention made by or known to the Contractor or, where applicable, of any contemplated publication by the Contractor, stating the date and identity of such publication or contemplated publication; and

(B) convey to the Government the Contractor's entire right, title, and interest in such Invention by delivering to the Contracting Officer upon written request such duly executed instruments (prepared by the Government) of assignment and application, and such other papers as are deemed necessary to vest in the Government the Contractor's right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such Invention throughout the world, subject, however, to the rights of the Contractor in foreign applications as provided in (e) below, and subject further to the reservation of a nonexclusive and royalty-free license to the Contractor (and to his existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which such Invention pertains;

(iii) the Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any such Invention;

(iv) in the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the Contractor's entire right, title, and interest in such Invention and the application, subject to the reservation as specified in (d) (ii) above; and

(v) the Contractor shall deliver to the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to the Government.

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(e) The Contractor, or those other than the Government deriving rights from the Contractor, shall, as between the parties hereto, have the exclusive right to file applications on Subject Inventions in each foreign country within:

- (i) nine months from the date a corresponding United States application is filed;
- (ii) six months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or
- (iii) such longer period as may be approved by the Contracting Officer.

The Contractor shall, upon written request of the Contracting Officer convey to the Government the Contractor's entire right, title, and interest in each Subject Invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation of a nonexclusive and royalty-free license to the Contractor together with the right of the Contractor to grant sublicenses, which license and right shall be assignable to the successor of that part of the Contractor's business to which the Subject Invention pertains.

(f) If the Contractor fails to deliver to the Contracting Officer the interim reports required by (c) (ii) above, or fails to furnish the written disclosures for all Subject Inventions required by (c) (i) above shown to be due in accordance with any interim report delivered under (c) (ii) or otherwise known to be unreported, there shall be withheld from payment until the Contractor shall have corrected such failures either ten per cent (10%) of the amount of this contract, as from time to time amended, or five thousand dollars (\$5,000), whichever is less. After payment of eighty per cent (80%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten per cent (10%) of such amount, or five thousand dollars (\$5,000), whichever is less, shall have been set aside, such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer:

- (i) the final report required by (c) (iii) above;
- (ii) written disclosures for all Subject Inventions required by (c) (i) above which are shown to be due in accordance with interim reports delivered under (c) (ii) above, or in accordance with such final reports, or are otherwise known to be unreported; and
- (iii) the information as to any subcontractor required by (h) below.

The maximum amount which may be withheld under this paragraph (f) shall not exceed ten per cent (10%) of the amount of this contract or five thousand dollars (\$5,000), whichever is less, and no amount shall be withheld under this paragraph (f) when the amount specified by this paragraph (f) is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph (f) shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

~~(g) The Contractor shall exert all reasonable effort in negotiating for the inclusion of a patent rights clause containing all the provisions of this Patent Rights clause except provisions (f) and (i) in any subcontract hereunder of three thousand dollars (\$3,000) or more having experimental, developmental, or research work as one of its purposes. In the event of refusal by a subcontractor to accept such a patent rights clause, the Contractor shall not proceed with the subcontract without written authorization of the Contracting Officer or unless there has been a waiver of the requirement as hereinafter provided. The Contractor, if unable to comply with the requirement that such a patent rights clause be included in a subcontract after exerting all reasonable effort to do so, may submit to the Contracting Officer a written request for waiver or modification of such requirement. If, within thirty-five (35) days after the receipt of such request, the Contracting Officer does not mail or otherwise furnish the Contractor written denial of such request or notification that the Government requests the Contractor's cooperation with the Government, which the Contractor agrees to provide in negotiating with the subcontractor for the acceptance of a suitable patent rights clause, the requirement shall be deemed to have been waived by the Contracting Officer as to all patent rights provisions with respect to Subject Inventions, except such provisions, if any, relating to the production or utilization of special nuclear material or atomic energy. Such request shall specifically state that the Contractor has used all reasonable effort to comply with said requirement and shall cite the waiver provision hereinabove set forth. The Contractor is not required, when negotiating with a subcontractor, to obtain in behalf of the Government any rights in Subject Inventions other than as provided herein. However, the Contractor is not precluded from separately negotiating with a subcontractor for rights in Subject Inventions for the Contractor's own behalf, but any costs so incurred shall not be considered as an allowable charge or cost under this contract. Reports, instruments, and other information required to be furnished by a subcontractor to the Contracting Officer under the provisions of such a patent rights clause in a subcontract hereunder may, upon mutual consent of the Contractor and the subcontractor (or by direction of the Contracting Officer) be furnished to the Contractor for transmission to the Contracting Officer.~~

(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing one or more patent rights clauses; furnish the Contracting Officer a copy of each of such clauses; and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to any subcontract clause granting rights to the Government in Subject Inventions, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. If there are no subcontracts containing patent rights clauses, a negative report is required. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

~~(i) When the Contractor shows that he has been delayed in the performance of this contract by reason of the Contractor's inability to obtain, in accordance with the requirements of (g) above, the prescribed or other authorized suitable patent rights clause from a qualified subcontractor for any item or service required under this contract for which the Contractor himself does not have available facilities or qualified personnel, the Contractor's delivery dates shall be extended for a period of time equal to the duration of such delay. Upon request of the Contractor, the Contracting Officer shall determine to what extent, if any, an additional extension of the delivery dates and increase in contract prices based upon additional costs incurred by such delay are proper under the circumstances, and the contract shall be modified accordingly.~~

(j) The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for royalties for the use of a Subject Invention on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States Government, charges for use of patents in which the Government holds a royalty-free license. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

"(b)(1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method. Such license (i) shall be non-transferable, except that the Government shall have the right to grant sub-licenses to any foreign government or international organization specifically for use in programs established by International Agreements for research, development or production of weapons or equipment for mutual defense, and (ii) shall include the practice of Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method, or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government."

"(g) The Contractor shall, unless otherwise authorized by the Contracting Officer as hereafter provided, include a patent rights clause containing all the provisions of this Patent Rights clause except provision (f) in any subcontract hereunder of three thousand dollars (\$3,000) or more having experimental, developmental or research work as one of its purposes. In the event of refusal by a subcontractor to accept such a patent rights clause, the Contractor (i) shall promptly submit a written report to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter, and (ii) shall not proceed with the subcontract without the written authorization of the Contracting Officer. Reports, instruments, and other information required to be furnished by a subcontractor to the Contracting Officer under the provisions of such a patent rights clause in a subcontract hereunder may, upon mutual consent of the Contractor and the subcontractor (or by direction of the Contracting Officer) be furnished to the Contractor for transmission to the Contracting Officer."

B.1A. MODIFICATION OF CLAUSE B.1 - PATENT RIGHTS. (LICENSE) - Clause B.1(b)(1) is hereby deleted and the following substituted in lieu thereof.

"(b)(1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method. Such license (i) shall be nontransferable, except that the Government shall have (a) the right to grant sublicenses to any foreign government or international organization specifically for use in programs established by International Agreements for research, development or production of weapons or equipment for mutual defense and (b) the right to grant sublicenses to others, under such terms and conditions as may be prescribed, for the practice of any Subject Invention throughout the world in the design, development, manufacture, operation, maintenance and testing of communications satellite systems, and of equipment, components, and ground tracking, transmitting and receiving facilities therefor, and (ii) shall include the practice of Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government."

ASPR 9-107.8 (60 Ed.) issued 15 Apr. 1962 (Rev. No. 9) and shall be used only in accordance with the instructions therein.

**B.2 FILING OF PATENT APPLICATIONS. (Jan. 1955)**—(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U.S. Code 181-188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U.S. Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

(Jan 1955)

B.3 PATENT INDEMNITY (Predetermined). If the amount of this contract is in excess of \$5,000, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply if: (i) the infringement results from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; or (ii) the infringement results from the addition to, or change in, the supplies furnished or construction work performed, which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) the claimed infringement is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction. The

foregoing shall not apply to the following contract items: (If any, listed elsewhere in this contract).

B.4.....DATA (Feb. 1962)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright; ~~provided, that with respect to the Subject Data now or hereafter covered by copyright and not originated in the performance of this contract, such license shall be only to the extent that the Contractor, its employees, or any individual or concern specifically employed or assigned by the Contractor to originate and prepare such Data under this contract, now has, or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.~~

(c) ~~\*See below~~  
~~The Contractor shall exert all reasonable effort to advise the Contracting Officer, at the time of delivery of the Subject Data furnished under this contract, (i) of all invasions of the right of privacy contained therein and (ii) of all portions of such Data copied from work not composed or produced in the performance of this contract and not licensed under this clause.~~

(d) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) ~~Subject to the provisions of 35 U.S.C. 411 and 412 above and~~ Unless otherwise limited below, the Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.

\* (g) The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of Subject Data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, or which is in the public domain, or with respect to which the Government has been placed in possession without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(h) Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate or ignore any marking not authorized by the terms of this contract on any piece of Subject Data furnished under this contract.

(i) Notwithstanding any Tables or Specifications included or incorporated in the contract by reference, "proprietary data" need not be furnished unless suitably identified in the Schedule of the contract as being required. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others. (Oct. 1958)

ASPR 9-203.1, 9-203.2, (60 Ed.) revised 15 Feb. 1962 (Rev. No. 7) and shall be used only in accordance with the requirements thereof.

\*(c) The Contractor shall not include in the Subject Data any copyrighted matter, without the written approval of the Contracting Officer, unless he provides the Government with the written permission of the copyright owner for the Government to use such copyrighted matter in the manner provided in paragraph (b) above.



(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright.

(c) The Contractor shall not include in the Subject Data any copyrighted matter, without the written approval of the Contracting Officer, unless he provides the Government with the written permission of the copyright owner for the Government to use such copyrighted matter in the manner provided in paragraph (b) above.

(d) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) Unless otherwise limited below, the Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.

(g) The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of Subject Data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, or which is in the public domain, or with respect to which the Government has been placed in possession without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(h) Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate or ignore any marking not authorized by the terms of this contract on any piece of Subject Data furnished under this contract.

(i) Data need not be furnished for standard commercial items or services which are normally or have been sold or offered to the public commercially by any supplier and which are incorporated as component parts in or to be used with the product or process being developed if in lieu thereof identification of source and characteristics (including performance specifications, when necessary) sufficient to enable the Government to procure the part or an adequate substitute, are furnished; and further, "proprietary data" need not be furnished for other items which were developed at private expense and previously sold or offered for sale, including minor modifications thereof, which are incorporated as component parts in or to be used with the product or process being developed if in lieu thereof the Contractor shall identify such other items and that "proprietary data" pertaining thereto which is necessary to enable reproduction or manufacture of the item or performance of the process. For the purpose of this clause "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to its manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others. (Oct. 1958)

ASPR 9-203.1, 9-203.4 (60 Ed.) revised 15 Feb. 1962 (Rev. No. 7) and shall be used only in accordance with the requirements thereof.

B.6 DATA (Feb. 1962)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright.

(c) The Contractor shall not include in the Subject Data any copyrighted matter, without the written approval of the Contracting Officer, unless he provides the Government with the written permission of the copyright owner for the Government to use such copyrighted matter in the manner provided in paragraph (b) above.

(d) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) Unless otherwise limited below, the Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.

(g) The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of Subject Data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, or which is in the public domain, or with respect to which the Government has been placed in possession without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(h) Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate or ignore any marking not authorized by the terms of this contract on any piece of Subject Data furnished under this contract.

(i) Notwithstanding any Tables or Specifications included or incorporated in the contract by reference, "proprietary data" need not be furnished unless suitably identified in the Schedule of the contract as being required. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others. (Oct. 1958)

(j) That portion of the Subject Data delivered under this contract which is identified in the Schedule as being subject to limitations shall not be released outside the Government, nor be duplicated, used, or disclosed in whole or in part for procurement or manufacturing purposes (other than for manufacture required in connection with repair or overhaul where an item is not procurable commercially so as to enable the timely performance of the overhaul or repair work; provided, when Data is released by the Government to a Contractor for such purposes, the release shall be made subject to the limitation of this clause; provided further, such Data shall not be used for manufacture or procurement of spare parts for stocks), without permission of the Contractor, if the following legend is marked on each piece of Data so limited either in its entirety or only partially as to its content:

Furnished under United States Government Contract No. .... and only those portions hereof which are marked (for example, by circling, underscoring or otherwise) and indicated as being subject to this legend shall not be released outside the Government (except to foreign governments, subject to these same limitations), nor be disclosed, used, or duplicated, for procurement or manufacturing purposes, except as otherwise authorized by contract, without the permission of .... This legend shall be marked on any reproduction hereof in whole or in part.

Provided, that such Data may be delivered to foreign governments as the national interest of the United States may require, subject to the limitations specified in this paragraph. The Contractor shall not impose limitations on the use of any piece of Data, or any portion thereof, which the Contractor has previously delivered to the Government without limitation. (Jun. 1959)

ASPR 9-203.1, 9-203.2, 9-203.3, (60 Ed.) revised 15 Feb. 1962 (Rev. No. 7) and shall be used only in accordance with the requirements thereof.

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B.7 AUTHORIZATION AND CONSENT (Jan. 1961)

(a) The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

(b) If this clause is made applicable to any item or items of a contract, or to an entire contract, the provisions of the clause of Section A hereof entitled "Authorization and Consent" are hereby made inapplicable to any such item or items or in the case of applicability to an entire contract, to any such entire contract.

(ASPR 9-102.2 (60 Ed.), revised 31 Jan. 1961 (ASPR Rev. No. 3) except (b) added and such clause shall be used only in accordance with the requirements thereof.)

B.8 EXCESS PROFIT (Jun. 1957)

The Contractor agrees that, unless otherwise provided by law, this contract shall be subject to all the provisions of 10 U.S.C. 2382 and 7300 and shall be deemed to contain all the agreements required by those sections; provided, however, that this clause shall not be construed to enlarge or extend by contract the obligations imposed by those sections. The Contractor agrees to insert in the subcontracts specified in those sections either the provisions of this clause or the provisions required by those sections.

(ASPR 7-104.11(a) (60 Ed.))

2.9 SPECIAL TOOLING. (Nov. 1961)

(a) The term "special tooling," as used in this clause, means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the Contractor for use in the performance of this contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (i) items of tooling or equipment heretofore acquired by the Contractor, or replacements thereof, whether or not altered or adapted for use in the performance of this contract, (ii) consumable small tools, or (iii) general or special machine tools, or similar capital items.

(b) The Contractor agrees not to use any items of special tooling except in the performance of this contract, or except as otherwise provided by this clause, without prior written approval of the Contracting Officer. The Contractor may, with the approval of the Contracting Officer, use the special tooling in the performance of other contracts with the Government, or subcontracts under Government contracts, provided that the Contractor agrees not to include in the price or prices for any such contracts or subcontracts, involving the use of such special tooling, the cost of such tooling or any allowance or charge to cover depreciation or amortization which has previously been charged against this contract.

(c) Within 60 days after delivery of the first production end items under this contract, or such later date as may be prescribed by the Contracting Officer, the Contractor shall if the Contracting Officer so requests, furnish the Contracting Officer a list of all special tooling acquired or manufactured by the Contractor for use in the performance of this contract. The list shall specify the nomenclature, tool number and related product part number or service, and unit or group cost of the special tooling. Upon completion or termination of all or a substantial part of the work under this contract the Contractor shall furnish a final list in the same form covering all items not previously reported under this paragraph; provided, however, that the Contracting Officer may by written notice waive this requirement or extend it until the completion of this contract and other contracts and subcontracts as to which approval has been obtained under paragraph (b) above. Special tooling which has become obsolete as a result of changes in design or specification need not be reported, except as provided for in paragraph (d).

(d) In the event of any changes in design or specifications which affect interchangeability of parts, the Contractor shall, unless otherwise agreed to by the Contracting Officer, give the Contracting Officer notice of any part which is not interchangeable with the new or superseding part and the usable special tooling for each part covered in such notice shall be retained by the Contractor subject to the provisions of paragraph (i), pending disposition under paragraph (f).

(e) At the time he furnishes any list or notice under (c) or (d) above, the Contractor may designate those items of special tooling (either specifically or by listing the particular products, parts, or services for which such items were used or designed) which it desires to retain, together with a written offer: (i) to retain any or all of such items, free and clear of any Government interest, for an amount designated therein, which should ordinarily not be less than the then fair value of such items (which fair value takes into account, among other things, the value of such items to the Contractor for use in further work by him); or (ii) to retain any or all such items for such period of time and subject to such terms and conditions as may be agreed to by the parties hereto, subject to ultimate retention or disposition of such items in accordance with paragraph (f) hereof.

(f) Within 90 days after receipt of any list or notice under paragraph (c) or (d) hereof, or such further period as may be agreed upon by the parties, the Contracting Officer shall furnish to the Contractor: (i) a list specifying the particular products, parts, or services for which the Government may require special tooling, together with a request that the Contractor transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling which were used or designed for the manufacture or performance of any designated portion of such products, parts, or services, and which were on hand when production of such products or parts, or performance of such services, ceased; or (ii) an acceptance or rejection of any offer made by the Contractor under paragraph (e) above, or a request for further negotiation with respect thereto; or (iii) subject to the provisions of paragraph (j) hereof, a direction to the Contractor to sell, or to dispose of as scrap, for the account of the Government, any or all of the special tooling covered by such list; or (iv) a statement with respect to any or all of the special tooling covered by such list that the Government has no further interest therein and waives its rights therein; or (v) any combination of the foregoing, as the circumstances warrant. The Contractor shall promptly comply with any request by the Contracting Officer under this paragraph to transfer title to any items of special tooling, and shall, subject to the provisions of paragraph (j) hereof, (1) immediately prepare such items for shipment by proper packaging, packing, and marking, in accordance with any instructions which may be issued by the Contracting Officer, and shall promptly deliver such items to the Government, as directed by the Contracting Officer, or (2) if a storage agreement has been entered into, prepare such items for storage in accordance therewith, as directed by the Contracting Officer. Any items of special tooling so delivered or stored shall be accompanied by such operation sheets or other appropriate data as are necessary to show the manufacturing operations or processes for which such items were used or designed. If the Contracting Officer has requested further negotiations under (ii) of this paragraph, the Contractor agrees that he will enter into such negotiations in good faith with the Contracting Officer. Any items of special tooling which are not disposed of by transfer of title and delivery to the Government, or by acceptance of an offer of the Contractor made under paragraph (e), or of such offer as modified in the course of negotiations, shall be disposed of in the manner set forth in (iii) or (iv) of this paragraph.

(g) If the Contracting Officer determines that the Contractor has disposed of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds shall: (i) be deducted from the amounts due to the Contractor under this contract and the contract amended accordingly; or (ii) be otherwise paid as the Contracting Officer may direct.

(h) The Contractor agrees that he will follow his normal industrial practice in maintaining property control records on all the special tooling, and that it will make such records available for inspection by the Government at all reasonable times. The Contractor further agrees that, to the extent practicable, he will identify by appropriate stamp, tag or other mark all special tooling subject to this clause.

(i) The Contractor agrees that between the date any usable items of special tooling are no longer needed by him, within the meaning of this clause, and the date of final disposition of such items under this clause, he will take all reasonable steps necessary to maintain the identity and existing conditions of such items, unless the Contracting Officer has directed that such items be disposed of as scrap or has given notice under (f) (iv). The Contractor shall not be required to keep any such items in place.

(j) Any preparation of items for shipment required of the Contractor under paragraph (f) of this clause, or any disposal as scrap under paragraph (f) (iii), or any action required of the Contractor under paragraph (i), shall be taken pursuant to written instructions of the Contracting Officer, which shall (i) provide for an equitable adjustment of the contract price to cover any additional cost, to the Contractor, not taken into account in the negotiation of this contract, of complying with such instructions, which adjustment shall be made in accordance with the procedure set forth in the clause of this contract entitled "Changes," or (ii) otherwise provide for payment to the Contractor of any such additional cost. Any failure of the Contracting Officer to issue the Contractor specific disposition instructions shall be construed as an instruction to the Contractor to take the action required under paragraph (i) with provision for equitable adjustment or payment as provided for above.

(k) The Contractor agrees that, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, he will include therein appropriate provisions to obtain rights comparable to those granted to the Government by this clause, and agrees that he will exercise such rights for the benefit of the Government, as the Contracting Officer may direct. (Sep. 1958)

B.10 ALTERED PARAGRAPH (K) FOR CLAUSE B.9

(k) The Contractor agrees that, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, he will to the extent consistent with his normal business practice include appropriate provisions therein to obtain rights comparable to those granted to the Government by this clause, and agrees that he will exercise such rights for the benefit of the Government, as the Contracting Officer may direct. (Sep. 1958) In the event that this clause applies to this contract, paragraph (k) of Clause B.9 shall be inapplicable.

B.11

INCENTIVE PRICE REVISION (Feb. 1962)

- (a) Definitions. As used in this clause, the following terms shall have the meanings set forth below:
- (i) The term "target price" means the unit price of any supplies or services under this contract, which is subject to adjustment in accordance with this clause, and is composed of "target cost" and "target profit."
  - (ii) The term "target cost" means that part of the target price which, at the time of its negotiation, was agreed to as the estimate of the unit cost of the supplies or services being procured.
  - (iii) The term "target profit" means that part of the target price which, at the time of its negotiation, was agreed to as the unit profit for furnishing the supplies or services at a cost equal to the target cost.
  - (iv) The term "total target price" means the sum of the target prices.
  - (v) The term "total target cost" means the sum of the target costs.
  - (vi) The term "total target profit" means the sum of the target profits.
  - (vii) The term "total adjusted cost" means the final negotiated cost of all supplies or services which are subject to price revision under this clause.
  - (viii) The term "total adjusted price" means the final contract price, as computed in accordance with this clause, for all supplies or services which are subject to price revision under this clause.
- (b) General. The supplies or services identified in the Schedule as Items..... are subject to price revision in accordance with the provisions of this clause; provided, that in no event shall the total adjusted price of such Items exceed..... percent (.....%) of the total target cost. Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.
- (c) Submission of Data. Within ..... days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those Items listed in paragraph (b) above, the Contractor shall submit, in such form as the Contracting Officer may require, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such Items, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such Items.
- (d) Price Revision. Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish the total adjusted price in accordance with the following:
- (1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, there shall be established by negotiation the total adjusted cost reasonably incurred or to be incurred for and properly allocable to the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.
  - (2) The total adjusted price shall be established by adding to the total adjusted cost an allowance for profit determined as follows:
- |   |  |
|---|--|
| WHEN THE TOTAL ADJUSTED COST IS:        | THE ALLOWANCE FOR PROFIT IS:   |
| Equal to the total target cost.....     | Total target profit.   |
| Greater than the total target cost..... | Total target profit less ..... percent (.....%) of the amount by which the total adjusted cost exceeds the total target cost.      |
| Less than the total target cost.....    | Total target profit plus ..... percent (.....%) of the amount by which the total adjusted cost is less than the total target cost. |
- (e) Records. (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The Contractor shall segregate the costs of any supplies or services for which the price is fixed and not subject to revision under this clause. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis in connection with the furnishing of the supplies or services identified in paragraph (b) above as being subject to price revision (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this paragraph, including this (ii), in all his subcontracts which are on other than a firm fixed-price basis.
- (2) The Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence, pertinent to the performance of this contract.
- (f) Certification. An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (c) above that the incurred costs are based upon records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, that such costs are correct to the best of his knowledge and belief, and that the accompanying estimate of costs to complete is considered reasonable.
- (g) Subcontracts. (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve a total price in excess of \$10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

\*(As set forth in the part of this contract entitled "Information for Incentive Price Revision")

(2) ~~Approved For Release 2002/06/11 : CIA-RDP66B00728R000400020011-2~~  
The Contractor hereunder (1) shall provide that the Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract, and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of \$2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(h) **Contract Modifications.** The total adjusted price, as determined in accordance with paragraph (d) above, shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer and shall apply to supplies delivered and to services performed under this contract.

(i) **Adjustment of Payments.** Pending execution of the contract modification referred to in paragraph (h) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices set forth in this contract; provided, that if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (j) (3) below, the parties may agree to revised billing prices, which shall be reflected in a modification to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the determination of the total adjusted price under paragraph (d) above. After execution of the contract modification referred to in paragraph (h) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total adjusted price and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(j) **Limitation on Payments.** (1) This paragraph (j) shall not apply after final price revision to the full extent permitted by this contract.

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer a cumulative statement setting forth:

(i) the total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) the total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) that portion of the total target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in (d)(2) above when the amount of costs stated under (ii) above differs from the aggregate target costs of such supplies or services; and

(iv) the total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provisions of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4) modified as outlined in (i) above.

(k) **Disagreements.** If the Contractor and the Contracting Officer fail to agree upon the total adjusted price within 60 days after the date on which the data required by (c) above are to be submitted, or within such further time as may be specified by the Contracting Officer, such failure to agree shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder.

(l) **Termination.** If this contract is terminated prior to establishment of the total adjusted price, prices of supplies or services subject to price revision under this clause shall be established pursuant to this clause for (i) completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

In the event the contract calls for spare parts or other supplies or services, which are to be ordered under a provisioning document or Government option, and the prices of such supplies or services are to be made subject to incentive price revision in accordance with the above clause, the following paragraph (m) shall be included in such clause:

(m) **Spare Parts.** Spare parts, other supplies, or services, which are to be furnished under this contract pursuant to a provisioning document or Government option, shall be subject to price revision in accordance with the provisions of this clause, and any prices established for such spare parts, other supplies, or services, pursuant to such provisioning document or Government option, shall be deemed to be target prices. Target cost and profit combination thereof, as modified as the parties may agree. (Jul. 1958)

B.12 PROSPECTIVE PERIODIC PRICE REDETERMINATION AT STATED INTERVALS (July 1960)

(a) General. The unit prices and the total price set forth in this contract shall be periodically redetermined in accordance with the provisions of this clause, provided, that in no event shall the total amount paid under this contract exceed ..... dollars (\$.....). The prices for supplies delivered and services performed prior to the first effective date of price redetermination shall remain fixed.

(b) Price Redetermination Periods. For the purpose of price redetermination the performance of this contract is divided into successive periods. The first period shall extend from the date of this contract to ..... , and the second and each succeeding period shall extend for ..... (.....) months from the end of the last preceding period, except that the final period may be varied by agreement of the parties. The first day of the second and each succeeding period shall be the effective date of price redetermination for the period.

(c) Price Redetermination. Not more than ..... days nor less than ..... days before the end of each redetermination period, except the last, and as otherwise provided in (iii) below, the Contractor shall submit:

(i) proposed prices for supplies which may be delivered or services which may be performed in the next succeeding period under this contract, together with—

(A) an estimate and breakdown of the costs of such supplies or services on DD Form 784 or in any other form on which the parties may agree;

(B) sufficient data to support the accuracy and reliability of such estimate; and

(C) an explanation of the differences between such estimate and the original (or last preceding) estimate for the same supplies or services;

(ii) a statement of all costs incurred in the performance of this contract through the end of the ..... first ..... month prior to the date of the submission of proposed prices, on DD Form 784 or in any other form on which the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for—

(A) supplies delivered and services performed; and

(B) inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

(iii) supplemental statements of costs incurred subsequent to the date set forth in (ii) above for—

(A) supplies delivered and services performed; and

(B) inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

as and to the extent that such information becomes available prior to the conclusion of negotiations on redetermined prices; and

(iv) any other relevant data which may reasonably be required by the Contracting Officer.

Upon receipt of the data required by this paragraph (c), the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies which may be delivered and services which may be performed in the period following the effective date of price redetermination. Where the Contractor fails to submit the data as required above within the time specified, payments under this contract may be suspended by the Contracting Officer until the data are furnished.

(d) Records. (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. However, no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the cost data required to be furnished under (c) above are readily ascertainable therefrom. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (d), in all his subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times until the expiration of three years after final payment under this contract make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence, pertinent to the performance of this contract, for any period.

(e) Certification. An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (c) above that the incurred costs are based upon the records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, that such costs are correct to the best of his knowledge and belief, and that the accompanying estimate of costs is considered reasonable.

(f) Subcontracts. (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve an estimated amount in excess of \$10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

\*(As set forth in the part of this contract entitled "Information for Price Redetermination")



(2) ~~Approved For Release 2002/06/11 : CIA-RDP66B00728R000400020011-2~~  
The Contractor shall provide that the Government may at all reasonable times until the expiration of three years after final payment under such subcontract make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract, and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts. The term "subcontract" as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of \$2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(g) **Contract Modifications.** Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, setting forth the redetermined prices for supplies delivered and services performed hereunder during the applicable price redetermination period.

(h) **Adjustment of Payments.** Pending execution of the contract modification referred to in paragraph (g) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract; provided that, if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of paragraph (i)(3) below, the parties may agree to greater or lesser billing prices, which shall be reflected in an amendment or supplemental agreement to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (g) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(i) **Limitation on Payments.** (1) This paragraph (i) shall apply only during a period for which firm prices have not been established.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer a statement cumulative from the inception of the contract, setting forth:

(i) the total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) the total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) that portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (i), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

(iv) the total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments);

provided, that such statement need not be submitted for any quarter for which either no costs are to be reported under (ii) above or revised billing prices have been established in accordance with paragraph (h) above and do not exceed the existing contract price, the Contractor's price-redetermination offer, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified as outlined in (i) above.

(j) **Disagreements.** If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within sixty (60) days after the date on which the data required by (c) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of (g), (h), and (i) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification. Pending such final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as hereinbefore provided.

(k) **Termination.** If this contract is terminated, prices shall continue to be established pursuant to this clause (i) for completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, for supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

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**INCENTIVE PRICE REVISION CLAUSE (SUCCESSIVE TARGETS)** (Mar. 1960)

(a) **Definitions.** As used in this clause, the following term shall have the meanings set forth below:

- (i) The term "initial target price" means the unit price of any supplies or services under this contract, which is subject to adjustment in accordance with the provisions of paragraph (g) of this clause, and is composed of "initial target cost" and "initial target profit."
- (ii) The term "initial target cost" means that part of the initial target price which, at the time of its negotiation, was agreed to as the estimate of the unit cost of the supplies or services being procured.
- (iii) The term "initial target profit" means that part of the initial target price which at the time of its negotiation, was agreed to as the unit target profit for furnishing the supplies or services if the target cost agreed upon in accordance with the provisions of paragraph (g) herein is equal to the initial target cost.
- (iv) The term "total initial target price" means the sum of the initial target prices.
- (v) The term "total initial target cost" means the sum of the initial target costs.
- (vi) The term "total initial target profit" means the sum of the initial target profits.
- (vii) The term "target price" means the unit price of any supplies or services under this contract, which is subject to adjustment in accordance with paragraph (i) of this clause, and is composed of "target cost" and "target profit."
- (viii) The term "target cost" means that part of the target price which, at the time of its negotiation, is agreed to as the estimate of the unit cost of the supplies or services being procured.
- (ix) The term "target profit" means that part of the target price which, at the time of its negotiation, is agreed to as the unit profit for furnishing the supplies or services at a cost equal to the target cost.
- (x) The term "total target price" means the sum of the target prices.
- (xi) The term "total target cost" means the sum of the target costs.
- (xii) The term "total target profit" means the sum of the target profits.
- (xiii) The term "total adjusted cost" means the final negotiated cost of all supplies or services which are subject to price revision under this clause.
- (xiv) The term "total adjusted price" means the final contract price, as computed in accordance with this clause, for all supplies or services which are subject to price revision under this clause.
- (xv) The term "price ceiling" means the maximum amount that the Government may be obligated to pay the contractor for complete performance of this contract.

b. **General.** The supplies or services identified in the Schedule as Items ..... are subject to price revision in accordance with the provisions of this clause. The prices of these items as shown in the Schedule are the initial target prices and include an initial target profit of ..... percent (.....%) of initial target cost. Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.

(c) **Submission of Data for Establishment of Target Price.** Within ..... (.....) days after the end of the month in which there is completion of ....., and as otherwise provided in (iv) below, the contractor shall submit:

- (i) proposed target prices for supplies delivered and to be delivered and services performed under this contract;
  - (ii) a statement of all costs incurred in the performance of this contract through the end of the month specified above, on DD Form 784 or in any other form on which the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for—
    - (A) supplies delivered and services performed; and
    - (B) inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);
  - (iii) an estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, on DD Form 784 or in any other form on which the parties may agree, together with—
    - (A) sufficient data to support the accuracy and reliability of such estimate and
    - (B) an explanation of the differences between such estimate and the original estimate used in establishing the initial unit prices set forth in this contract for the same supplies or services;
  - (iv) supplemental statements of costs incurred subsequent to the end of the month specified in (ii) above for—
    - (A) supplies delivered and services performed; and
    - (B) inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);
- as and to the extent that such information becomes available prior to the conclusion of negotiations establishing target prices; and
- (v) any other relevant data which may reasonably be required by the contracting officer.

(d) **Submission of Data for Final Price Revision.** Within ..... (.....) days after the end of the month in which the contractor has delivered the last unit of supplies and completed the services called for by those items listed in paragraph (b) above, the contractor shall submit, in such form as the contracting officer may require, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such items, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work under such items.



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(e) ~~Report.~~ The contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. However, no material change will be required to be made in the contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the cost data required to be furnished under (c) and (d) above are readily ascertainable therefrom. The contractor shall segregate the costs of any supplies or services for which the price is fixed and not subject to revision under this clause. Each subcontract placed by the contractor hereunder on other than a firm fixed-price basis in connection with the furnishing of the supplies or services identified in paragraph (b) above as being subject to price revision (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts which are on other than a firm fixed-price basis.

(2) The Government may, at all reasonable times, until the expiration of 3 years after final payment under this contract, make such examination or audit as the contracting officer may require of the contractor's books, records, documents, and other evidence, pertinent to the performance of this contract.

(f) **Certification.** An authorized responsible official of the contractor shall certify in such form as the contracting officer may reasonably require, on each statement of costs submitted to the contracting officer pursuant to paragraph (c) or (d) above that the incurred costs are based upon records of the contractor, that such records reflect generally accepted accounting principles and practices normally followed by the contractor, that such costs are complete and correct to the best of his knowledge and belief, and that the accompanying estimate of costs to complete is considered reasonable.

(g) **Establishment of Target Price and Incentive Formula.** Upon submission of the information required by paragraph (c) above, the contractor and the contracting officer shall promptly negotiate to establish the total target cost, which when added to the total target profit determined as follows, shall constitute the total target price:

(1) If the total target cost is more than the total initial target cost the total initial target profit will be decreased, or if the total target cost is less than the total initial target cost the total initial target profit will be increased, by ..... percent of the difference between the total initial target cost and the total target cost provided that in no event will the total target profit be less than ..... percent (.....%) or more than ..... percent (.....%) of the total initial target cost.

(2) The contractor and the contracting officer shall further negotiate to establish the price and profit adjustment formula, and price and profit ceiling, expressed as percentages of the total target cost. However, in no event shall the price ceiling exceed ..... percent (.....%) of the total initial target cost.

(3) The target cost, target profit and the terms of cost incentive sharing shall be evidenced by a modification to this contract signed by the contractor and contracting officer.

(h) **Subcontracts.** (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage of cost basis; and the contractor shall not, without the prior written consent of the contracting officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve a total price in excess of \$10,000, including the fee. The contracting officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the contracting officer as required by this subparagraph (1).

(2) Each subcontract placed by the contractor hereunder (i) shall provide that the Government may, at all reasonable times, until the expiration of 3 years after final payment under such subcontract, make such examination or audit as the contracting officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract, and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of \$2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(i) **Final Price Revision.** Upon submission of the data required by paragraph (d) above, the contractor and the contracting officer shall promptly establish the total adjusted price in accordance with the following:

(1) On the basis of the information required by paragraph (d) above, together with any other pertinent information, there shall be established by negotiation the total adjusted cost reasonably incurred or to be incurred for and properly allocable to the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.

(2) The total adjusted price shall be established by adding to the total adjusted cost an allowance for profit determined as follows:

WHEN THE TOTAL ADJUSTED COST IS:

Equal to the total target cost

Greater than the total target cost

Less than the total target cost

THE ALLOWANCE FOR PROFIT IS:

Total target profit.

Total target profit less ..... percent (.....%) of the amount by which the total adjusted cost exceeds the total target cost.

Total target profit plus ..... percent (.....%) of the amount by which the total adjusted cost is less than the total target cost.

However, in no event shall (i) total adjusted price exceed ..... percent of the total target cost, and (ii) the allowance for profit exceed ..... percent of the total target cost.

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The above incentive share percentages and limitation on total adjusted price and allowance for profit shall be negotiated at the time of establishment of target prices in accordance with paragraph (g) above.

(8) The final adjusted price of the items referred to in paragraph (b) shall be evidenced by a modification to this contract signed by the contractor and contracting officer, and shall apply to such supplies delivered and to such services performed under this contract.

(j) **Adjustment of Payment.** Pending execution of the contract modification referred to in paragraph (i) above, the contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the initial target prices set forth in this contract, until target prices are established pursuant to paragraph (g) above; thereafter, the target prices shall be used for billing; provided, that if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (k)(3) below, the parties may agree to greater or lesser billing prices, which shall be reflected in a modification to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the determination of the total adjusted price under paragraph (i) above. After execution of the contract modification referred to in paragraph (i) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total adjusted price and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(k) **Limitation on Payments.** (1) This paragraph (k) shall not apply after final price revision to the full extent permitted by this contract.

(2) Within forty-five (45) days after the end of each quarter of the contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the contractor shall submit to contracting officer a cumulative statement setting forth:

(i) the total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) the total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) that portion of the total target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in (i)(2) above when the amount of costs stated under (ii) above differs from the aggregate target costs of such supplies or services; and

(iv) the total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2)(i), (ii), and (iii) above, the contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(l) **Disagreements.** If the contractor and the contracting officer fail to agree upon the total target price and cost incentive sharing or total adjusted price within 60 days after the date on which the data required by paragraphs (c) or (d) above are to be submitted, or within such further time as may be specified by the contracting officer, such failure to agree shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the contracting officer shall promptly issue a decision thereunder.

(m) **Termination.** If this contract is terminated prior to establishment of the total adjusted price, prices of supplies or services subject to price revision under this clause shall be established pursuant to this clause for (i) completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

(n) **Spare Parts.** Spare parts, other supplies, or services, which are to be furnished under this contract pursuant to a provisioning document or Government option, shall be subject to price revision in accordance with the provisions of this clause, and any prices established for such spare parts, other supplies, or services, pursuant to such provisioning document or Government option, shall be deemed to be initial target prices or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial target or target cost and profit and final adjusted prices covering such spare parts, other supplies or services may be established either separately, in the aggregate, or in any combination thereof, as the parties may agree. (This paragraph (n) may be deleted where inapplicable.)

(AFPI 7-108.50 (60 Ed))

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Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) **Computation of Amounts.** (1) Unless a smaller amount is requested, each progress payment shall be (i) .....A\* percent of the amount of the Contractor's total costs incurred under this contract plus (ii) the amount of progress payments to subcontractors as provided in (j) below; all less the sum of previous progress payments.

(2) The Contractor's total costs ((a)(1)(i)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) .....B\* percent of the costs mentioned in (a)(1)(i), above, plus any unliquidated progress payments mentioned in item (a)(1)(ii) above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) .....C\* percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments.

(4) The aggregate amount of progress payments made shall not exceed .....D\* percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) **Liquidation.** Except as provided in the clause entitled "Termination For Convenience of the Government," all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or .....E\* percent of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.

(c) **Reduction or Suspension.** The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, (v) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract, or (vi) is realizing less profit than the estimated profit used for establishing a liquidation percentage in paragraph (b), if that liquidation percentage is less than the percentage stated in paragraph (a) (1).

(d) **Title.** Immediately, upon the date of this contract, title to all parts; materials; inventories; work in process; special tooling as defined in the clause of this contract entitled "Special Tooling"; nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids not included within the definition of special tooling in such "Special Tooling" clause; and drawings and technical data (to the extent delivery thereof to the Government is required by other provisions of this contract); theretofore acquired or produced by the Contractor and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor and allocated or properly chargeable to this contract as aforesaid shall forthwith vest in the Government upon said acquisition, production or allocation. Notwithstanding that title to property is in the Government through the operation of this clause, the handling and disposition of such property shall be determined by the applicable provisions of this contract such as: the Default clause and paragraph (h) of this clause; Termination for Convenience of the Government clause; and the Special Tooling clause. Current production scrap may be sold by the Contractor without approval of the Contracting Officer and the proceeds shall be credited against the costs of contract performance. With the consent of the Contracting Officer and on terms approved by him, the Contractor may acquire or dispose of property to which title is vested in the Government pursuant to this clause, and in that event, the costs allocable to the property so transferred from this contract shall be eliminated from the costs of contract performance and the Contractor shall repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Contractor under this contract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof) which had not been delivered to, and accepted by the Government under this contract or which had not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor. The provisions of this contract referring to or defining liability for Government-furnished property shall not apply to property to which the Government shall have acquired title solely by virtue of the provisions of this clause.

(e) **Risk of Loss.** Except to the extent that the Government shall have otherwise expressly assumed the risk of loss of property, title to which vests in the Government pursuant to this clause, in the event of the loss, theft or destruction of or damage to any such property before its delivery to and acceptance by the Government, the Contractor shall bear the risk of loss and shall repay the Government an amount equal to the unliquidated progress payments based on costs allocable to such lost, stolen, destroyed or damaged property.

(f) **Control of Costs and Property.** The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) **Reports—Access to Records.** Insofar as pertinent to the administration of this clause, the Contractor will (i) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Contracting Officer, and (ii) give the Government reasonable opportunity to examine and verify his books, records and accounts.

(h) **Special Provisions Regarding Default.** If this contract is terminated pursuant to the clause entitled "Default," (i) the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments and (ii) with respect to all property as to which the Government elects not to require delivery under the clause entitled "Default," title shall vest in the Contractor upon full liquidation of progress payments, and the Government shall be liable for no payment except as provided by the "Default" clause.

(i) **Reservations of Rights.** The rights and remedies of the Government provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title pursuant to this clause, shall excuse the Contractor from performance of his obligations under this contract, nor constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Government in exercising any right, power or privilege under this clause shall affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power or privilege of the Government.

(j) **Progress Payments to Subcontractors.** (1) The amount mentioned in item (a) (1)(ii) above shall be the sum of (i) all the progress payments made by the Contractor to his subcontractors and remaining unliquidated, and (ii) unpaid billings for progress payments to subcontractors which have been approved for current payment in the ordinary course of business, when under subcontracts which conform to (2) below.

(2) Subcontracts on which progress payments to subcontractors may be included in the base for progress payments pursuant to paragraph (a) of this clause are limited to those subcontracts in which there is expected to be a long "lead time," approximating six months or more between the beginning of work and the first delivery, containing subcontract progress payment provisions which (i) are substantially similar to and as favorable to the Government as this "Progress Payments" clause, no more favorable to the subcontractor than this clause is to the Contractor and on a basis of not more than 70 percent of total costs or 85 percent of direct labor and material costs (except that these percentages may be 75 percent of total costs or 90 percent of direct labor and material costs for those subcontractors which are small business concerns), and (ii) make all rights of the subcontractor with respect to all property to which the Government has title under the subcontract subordinate to the rights of the Government to require delivery of such property to it in the event of default by the Contractor under this contract or in the event of the bankruptcy or insolvency of the subcontractor.

(3) The Government agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract shall be applied to reduce the amount of unliquidated progress payments made by the Government to the Contractor under this contract. In the event the Contractor fully liquidates such progress payments made by the Government to him hereunder and there are progress payments to any subcontractors which are unliquidated, the Contractor shall be subrogated to all the Government's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the Contractor.

(4) The billings described in (j)(1)(ii) above shall be paid promptly by the Contractor in the ordinary course of business, not later than a reasonable time after payment of equivalent amounts by the Government to the Contractor.

(5) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraph 503 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

\* Percentages for A, B, C, D and E above are specified in the Schedule hereof.

(ASPR Appendix E SLOAN (50 Ed.) revised 31 Jan. 1961 (Rev. No. 3))

(k) If made part of a letter contract, this clause shall be deemed to be modified and supplemented as follows:

(1) By changing paragraph (a)(4) to read: "(4) The aggregate amount of progress payments made shall not exceed \$ (Specified elsewhere herein)."

(2) By making the following provisions applicable in lieu of paragraph (b) above until unit delivery billing prices are specified:

"Progress payments made hereunder shall be liquidated in the following manner, unless previously liquidated pursuant to paragraph (b):

a. If this letter contract shall be superseded by a fixed-price type contract, unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the first progress or other payments, which shall be made under such contract.

b. If this letter contract shall be superseded by a cost-reimbursement type contract, progress payments made hereunder shall be liquidated by deducting the unliquidated amount thereof from the first payments which shall be made under such cost-reimbursement contract.

c. If this letter contract shall not be superseded by a contract calling for the furnishing of all or part of the articles or services covered hereby, unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the amount payable under the provisions of the Termination clause for this letter contract.

d. If this letter contract shall in part be terminated and shall in part be superseded by a contract, the unliquidated progress payments made hereunder shall be allocated by the Government for the purpose of liquidation to the terminated portion of the letter contract and to the superseding contract in such proportions as the Government shall deem to be equitable, and the part of such progress payments allocated to each shall be liquidated in accordance with the applicable provisions of subdivisions a, b, and c of this paragraph.

e. If the method of liquidating progress payments provided above shall not result in the full liquidation thereof, the Contractor shall forthwith pay the unliquidated balance to the Government upon demand."

(1) The following provision is applicable only when this clause is made part of a definitive contract which supersedes a letter contract containing said clause:

"The costs, previous progress payments, aggregate progress payments and unliquidated progress payments, mentioned in paragraph (a) of this progress payments clause, include the costs incurred and progress payments made under the letter contract which has been superseded by this contract."

B.15 PAYMENT FOR OVERTIME AND SHIFT PREMIUMS (FEB. 1962)

The contract price shall not include any amount on account of overtime premiums or shift premiums, except to the extent that they either (i) are approved in writing on behalf of the Government or (ii) are paid for work —

- (A) necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
- (B) by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
- (C) in the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or
- (D) which will result in lower overall cost to the Government.

(ASPR 12-102.3 (60 Ed.) revised 15 Feb. 1962 (Rev. No. 7) and shall be used only in accordance with the requirements thereof.)

B.16 SOVIET-CONTROLLED AREAS ~~EXCLUDED~~ (APR. 1962)

(a) The Contractor shall not acquire for use in the performance of this contract any supplies or services originating from sources within Soviet-controlled areas, as listed in the Schedule of this contract, or transported from Hong Kong or Macao, without the written approval of the Contracting Officer.

(b) The Contractor agrees to insert the provisions of this clause, including the Soviet-controlled areas listed in the Schedule, ~~and this subparagraph (b),~~ in all subcontracts hereunder.

(ASPR 7-103.15 (6-403) (60 Ed.) <sup>revised 15 Apr. 1962 (Rev. No. 9)</sup> and shall be used only in accordance with the requirements thereof. instructions therein.

\*or through

\*\* this subparagraph (b) and

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B 17

**BAILMENT**

It is contemplated by the parties hereto that the Government will bail (in addition to any property listed in this contract as to be "furnished" by the Government) to the Contractor the items listed elsewhere herein for use in connection with the performance of this contract, and that an appropriate written agreement of bailment will be entered into by and between the parties hereto for that purpose. In the event of delay or failure of the Government to bail such property, as aforesaid, the provisions of the clause of this contract entitled "Government-Furnished Property" or "Government Property" (whichever is applicable) relating to failure or delay in the furnishing of property, shall be applicable.

(AFPI 13-550 (a))

B 18

**BAILMENT**

It is anticipated that the Government may bail to the Contractor such Government property of the categories specified elsewhere herein as may from time to time be deemed by the Contracting Officer to be necessary in the interest of the Government to so furnish, provided, however, the effect of such bailment upon the contract price or fixed fee (whichever is applicable) shall be reflected by adjusting the contract price or fixed fee (whichever is applicable) in accordance with the procedures set forth in the Changes clause of this contract, and the contract amended accordingly by supplemental agreement prior to the payment of Contractor's final invoice under this contract. Any property bailed pursuant to this paragraph shall be made available to the Contractor only under the provisions of a separate bailment agreement or agreements and this contract shall not be construed as effecting or committing the Government to the bailment of such property.

(AFPI 13-550 (b))

B 19

**BAILMENT (For Use in Letter Contracts Only)**

It is anticipated that the Government may bail to the Contractor such items of Government property specified elsewhere herein as may from time to time be deemed by the Contracting Officer to be necessary in the interest of the Government to so furnish, provided, however, the effect of such bailment shall be considered in any adjustments in amounts finally payable to the Contractor at the time of settlement of Contractor's termination claim or taken into account at the time of execution of the definitive contract contemplated hereby. Any property bailed pursuant to this paragraph shall be made available to the Contractor only under the provisions of a separate bailment agreement or agreements and this contract shall not be construed as effecting or committing the Government to the bailment of such property.

(AFPI 13-550 (c))

B.20 AMMUNITION AND EXPLOSIVE MATERIAL SAFETY (APR. 1960)

The Contractor shall comply with the applicable portions of Air Force Technical Orders 11C-1-6, 11A-1-40, 11A-1-40C, 42B1-1-6 and AF Regulation 86-6, in effect on the date of this contract, in addition to local, State and Federal ordinances, laws and codes in the manufacture, handling, storage, packaging, transportation or use which may affect the performance of this contract of Government or Contractor owned ammunition or explosive material. The Contractor shall also comply with any additional safety measures required by the Contracting Officer with regard to such ammunition or explosive material; provided, that if compliance with such additional safety measures results in a material increase in the cost or time of performance of the contract, an equitable adjustment will be made in accordance with the clause hereof entitled "Changes".

(AFPI 7-4048 (60 Ed.) and is authorized for use in accordance with the instructions therein)

B.21 CHANGES TO MAKE OR BUY PROGRAM (JUL. 1960)

The Contractor agrees to perform this contract in accordance with the "make or buy" program attached to this contract except as hereinafter provided. If the Contractor desires to change the "make or buy" program, he shall notify the Contracting Officer in writing of the proposed change reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the proposed change. Changes in the place of performance of work on any "make" item in the "make or buy" program are subject to this requirement. With respect to items deferred at the time of negotiation of this contract for later additions to the "make or buy" program, the Contractor shall notify the Contracting Officer of each proposed addition at the earliest possible time, together with justification in sufficient detail to permit evaluation. The Contractor shall not, without the written consent of the Contracting Officer, make changes or additions to the program; provided, that in his discretion, the Contracting Officer may ratify in writing any changes or additions and such ratification shall constitute the consent of the Contracting Officer required by this clause. The "make or buy" program attached to this contract shall be deemed to be modified in accordance with the written consent or ratification by the Contracting Officer.

(ASPR 3-902.1 (60 Ed.) Revised 22 July 1960 (Rev. No. 1) and is authorized for use in accordance with the instructions therein.

B.22 SAFETY AND ACCIDENT PREVENTION (JUN. 1959)

In performing any work under this contract on premises which are under the direct control of the Government, the Contractor shall (i) conform to all safety rules and requirements prescribed in Air Force Manual 32-3, as in effect on the date of this contract and (ii) take such additional precautions as the Contracting Officer may reasonably require for safety and accident prevention purposes. The Contractor agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of Contractor and Government personnel performing or in any way coming in contact with the performance of this contract on such premises. Any violation of such rules and requirements, unless promptly corrected, as directed by the Contracting Officer, shall be grounds for termination of this contract in accordance with the default provisions hereof.

(AFPI 7-4047 (60 Ed.) and is authorized for use in accordance with the instructions therein)

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B 23

#### NOTICE OF RADIOACTIVE MATERIALS

(a) Contractor shall advise the Contracting Officer in writing, or such office as the Contracting Officer may designate, prior to the delivery of any item or completion of any service called for under this contract if such item or any item upon which service is performed contains radioactive material which requires specific licensing under the Atomic Energy Act of 1954, as set forth as of the date of this contract in the Code of Federal Regulations, Title 10, Parts 30, 40 and 70. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of such materials, the name and strength of the isotope, the manufacturer of the radioactive materials, and any other information known to the Contractor which will put users of the items on notice of the hazards involved in their use. (BOB No. 38-RO27.3) Such notification shall be made to the Contracting Officer with sufficient lead time in order that the Air Force may complete licensing requirements prior to delivery and at such time that delivery dates will not be affected.

(b) All items, parts, or subassemblies which contain radioactive materials, and all containers in which such items, parts, or subassemblies are delivered to the Government, shall be clearly marked and labeled as required by Military Specification MIL-M-19590B.

(AFPI 7-4053 (60 Ed.) revised 24 July 1961 (AFPI Rev. No. 8) and is authorized for use in accordance with the instructions therein).

#### PREPARATION OF DANGEROUS MATERIALS FOR SHIPMENT (NOV. 1960)

If shipment of dangerous material, as defined in AFM 71-4, "Packaging and Handling of Dangerous Materials for Transportation by Military Aircraft," is to be made by military air or to an aerial port of embarkation, the Contractor shall label, mark and prepare the material for shipment in accordance with the provisions of AFM 71-4. The Contractor shall comply with the requirement for shipper's certification set forth in paragraph 4, Chapter I of referenced manual. The provisions of this clause shall be included in any subcontract under which dangerous materials may be supplied.

(AFPI 7-4062 (60 Ed.) issued 17 January 1961 (AFPI Rev. No. 2) and is authorized for use in accordance with the instructions therein).

B.25 DESCRIPTIVE IDENTIFICATION DATA TO BE FURNISHED BY GOVERNMENT SUPPLIERS  
(End Items) (Aug. 1960)

In item No(s) \_\_\_\_\_ \*

the Contractor shall furnish identification data in accordance with MIL-D-26715 (USAF) as in effect on the date of this contract. This service is included as an item in the contract schedule. Such data shall be delivered to the Government in accordance with the time cycle contained in the specification. No deliveries shall be made on these items until the contract has been amended to include the appropriate stock numbers. Any delay on the part of the Government to adhere to the time cycle set forth in the specification shall be considered an excusable delay within the meaning of the clause of this contract entitled "Default" or "Excusable Delays." Any such excusable delay will automatically extend the delivery schedule by the time of the delay.

AFPI 7-4041(a) (60 Ed.)

B.26 DESCRIPTIVE IDENTIFICATION DATA TO BE FURNISHED BY GOVERNMENT SUPPLIERS  
(Spare Parts) (Aug. 1960)

The Contractor shall furnish identification data in accordance with MIL-D-26715 (USAF) as in effect on the date of this contract for Spare Parts to be selected and furnished under provisioning procedures as established by item No.(s) \_\_\_\_\_. The price for furnishing such data shall be included in the price of said spare parts and shall be negotiated at the time and in the manner provided in this contract for the price of spare parts. Any delay on the part of the Government to adhere to the time cycle set forth in the specification shall be considered an excusable delay within the meaning of the clause of this contract entitled "Default" or "Excusable Delays." Any such excusable delay will automatically extend the delivery schedule by the time of the delay.

AFPI 7-4041(b) (60 Ed.)

\*Specified elsewhere herein

B.27 **FEDERAL, STATE, AND LOCAL TAXES (JUL. 1960)**

(a) As used throughout this clause, the term "contract date" means the date of this contract. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes, to the extent allocable to this contract, all Federal, State, and local taxes which, on the contract date:

(i) by Constitution, statute, or ordinance, are applicable to this contract, or to the transactions covered by this contract, or to property or interests in property; or

(ii) pursuant to written ruling or regulation, the authority charged with administering any such tax is assessing or applying to, and is not granting or honoring an exemption for, a Contractor under this kind of contract, or the transactions covered by this contract, or property or interests in property.

(c) Except as may be otherwise provided in this contract, duties in effect on the contract date are included in the contract price, to the extent allocable to this contract.

(d) (1) If the Contractor is required to pay or bear the burden—

(i) of any tax or duty which either was not to be included in the contract price pursuant to the requirements of paragraphs (b) and (c), or of a tax or duty specifically excluded from the contract price by a provision of this contract; or

(ii) of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price; or

(iii) of any interest or penalty on any tax or duty referred to in (i) or (ii) above; the contract price shall be increased by the amount of such tax, duty, interest, or penalty allocable to this contract; provided, that the Contractor warrants in writing that no amount of such tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise; and provided further, that liability for such tax, duty, rate increase, interest, or penalty was not incurred through the fault or negligence of the Contractor or his failure to follow instructions of the Contracting Officer.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which:

(i) was to be included in the contract price pursuant to the requirements of paragraphs (b) and (c);

(ii) was included in the contract price; or

(iii) was the basis of an increase in the contract price; the contract price shall be decreased by the amount of such relief, refund, or drawback allocable to this contract, or the allocable amount of such relief, refund, or drawback shall be paid to the Government, as directed by the Contracting Officer. The contract price also shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden, or does not obtain a refund or drawback of any such tax, duty, interest, or penalty. Interest paid or credited to the Contractor incident to a refund of taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

(3) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (d) shall set forth the amount thereof as a separate item and shall identify the particular tax or duty involved.

(4) This paragraph (d) shall not be applicable to social security taxes; income and franchise taxes, other than those levied on or measured by (i) sales or receipts from sales, or (ii) the Contractor's possession of, interest in, or use of property, title to which is in the Government, excess profits taxes; capital stock taxes; unemployment compensation taxes, or property taxes, other than such property taxes, allocable to this contract, as are assessed either on completed supplies covered by this contract, or on the Contractor's possession of, interest in, or use of property, title to which is in the Government.

(5) No adjustment of less than \$100 is required to be made in the contract price pursuant to this paragraph (d).

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the discretion of the Contracting Officer.

(f) (i) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes, and duties, that reasonably may be expected to result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorneys' fees.

(g) ~~In the event this clause applies to this contract, Clause A-22 shall be applicable~~

B.28

USE OF GOVERNMENT FACILITIES ON A NO-CHARGE BASIS

(a) The Contractor is authorized to use, in the performance of this contract, the Government-owned facilities provided to it under Facilities Contracts listed elsewhere herein, in effect on the date of this contract, on a no-charge basis.

(b) The following subcontractors having Government-owned facilities provided under the Facilities Contracts set forth below, in effect on the date of this contract, are authorized to use such facilities on a no-charge basis for the subcontract items listed below, and the subcontract shall so provide:

Subcontractor	Facilities Contract Number	Subcontract Item
(Listed elsewhere herein)		

(c) If the Contractor enters into other subcontracts with subcontractors who have Government-owned facilities provided to them under Facilities Contracts which provide that no-charge use may be authorized, the Contracting Officer may authorize the use of such facilities on a no-charge basis, provided (i) he determines that such use will not give the subcontractor a favored competitive position, and (ii) this contract is amended to reflect adequate consideration to the Government for the use of such facilities on a no-charge basis. Such subcontracts shall specifically authorize the no-charge use, and require the manual approval of the Contracting Officer. No amendment to this contract will be required, as provided in (ii) above, if the Contracting Officer determines that an elimination of charge for use of such facilities will of itself result in an adequate decreased cost to the Government under this contract.

(d) If the Government-owned facilities provided to the Contractor or any subcontractor hereunder on a no-charge basis are increased or decreased or do not remain available during the performance of this contract, or if any change is made in the terms and conditions under which they are made available, such equitable adjustment as may be appropriate will be made in the terms of this contract, unless such increase or decrease was contemplated in the establishment of the price of this contract or a subcontract.

(e) The Contractor agrees that it will not directly or indirectly, through overhead charges or otherwise, include in the price of this contract, or seek reimbursement under this contract for, any rental charge paid by the Contractor for the use on other contracts of the facilities referred to herein. Any subcontract hereunder which authorizes the subcontractor to use Government facilities on a no-charge basis shall contain a provision to the same effect as this paragraph (e).

(AFPI 7-4052)

USE OF GOVERNMENT FACILITIES ON A NO-CHARGE BASIS

(a) The Contractor is authorized to use, in the performance of this contract, the Government-owned facilities provided to it under Facilities Contracts listed elsewhere herein, in effect on the date of this Contract, on a no-charge basis.

(b) If the Contractor enters into subcontracts with subcontractors who have Government-owned facilities provided to them under Facilities Contracts which provide that no-charge use may be authorized, the Contracting Officer may authorize the use of such facilities on a no-charge basis, provided (i) he determines that such use will not give the subcontractor a favored competitive position, and (ii) this contract is amended to reflect adequate consideration to the Government for the use of such facilities on a no-charge basis. Such subcontracts shall specifically authorize the no-charge use, and require the manual approval of the Contracting Officer. No amendment to this contract will be required, as provided in (ii) above, if the Contracting Officer determines that an elimination of charge for use of such facilities will of itself result in an adequate decreased cost to the Government under this contract.

(c) If the Government-owned facilities provided to the Contractor or any subcontractor hereunder on a no-charge basis are increased or decreased or do not remain available during the performance of this contract, or if any change is made in the terms and conditions under which they are made available, such equitable adjustment as may be appropriate will be made in the terms of this contract, unless such increase or decrease was contemplated in the establishment of the price of this contract or a subcontract.

(d) The Contractor agrees that it will not directly or indirectly, through overhead charges or otherwise, include in the price of this contract, or seek reimbursement under this contract for, any rental charge paid by the Contractor for the use on other contracts of the facilities referred to herein. Any subcontract hereunder which authorizes the subcontractor to use Government facilities on a no-charge basis shall contain a provision to the same effect as this paragraph (d).

(AFPI 7-4052 except (i) paragraph (b) is deleted (ii) the word "other" is omitted from the first line of paragraph (c) and (iii) shall be used only in accordance with the requirements of the first sentence thereof).

B.30

**GROUND AND FLIGHT RISK.** (Feb. 1962)—(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft "in the open," during "operation," and in "flight," as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means—

(A) aircraft (including (I) complete aircraft, and (II) aircraft in the course of being manufactured, disassembled, or reassembled; provided, that an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government); and

(B) aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract; including all property installed therein, or in the process of installation, or temporarily removed from such aircraft; provided, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "in the open" means located wholly outside of buildings on the Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government shall be deemed to be in the open at all times while in Contractor's possession, care, custody, or control.

(iii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by The AFSC Contract Management Region Commander or his designee. With respect to land based aircraft, "flight" shall commence with the taxi roll from a flight line on the Contractor's premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises; with respect to seaplanes, "flight" shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises; with respect to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continue until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and with respect to vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device on the Contractor's premises and continue until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; provided, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landings, other landings made in the performance of this contract, or landings approved by The AFSC Contract Management Region Commander or his designee in writing.

(iv) The term "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(v) The term "operation" means operations and tests, other than on any production line, of aircraft, when not in flight, whether or not the aircraft is in the open or in motion during the making of any such operations or tests, and includes operations and tests of equipment, accessories, and power plants, only when installed in aircraft.

(vi) The term "flight crew members" means the pilot, the co-pilot and, unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defensive systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) (1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. Where the Contracting Officer finds that any of such aircraft is in the open under unreasonable conditions, he shall notify the Contractor in writing of the conditions he finds to be unreasonable and require the Contractor to correct such conditions within a reasonable time.

(2) Upon receipt of such notice, the Contractor shall act promptly to correct such conditions, regardless of whether he agrees that such conditions are in fact unreasonable. To the extent that the Contracting Officer may later determine that such conditions were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs he incurred in correcting such conditions and the contract shall be modified in writing accordingly. Any dispute as to the unreasonableness of such conditions or the equitable adjustment shall be deemed to be a dispute concerning a question of the fact within the meaning of the clause of this contract entitled "Disputes."

(3) If the Contracting Officer finds that the Contractor has failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, he may terminate the Government's assumption of risk under this clause, as to any of the aircraft which is in the open under such conditions, such termination to be effective at 12:01 A.M. on the fifteenth day following the day of receipt by the Contractor of written notice thereof. If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (f) of this clause, be made in the contract price to compensate the Contractor for any additional costs he incurred as a result of termination of the Government's assumption of risk under this clause and the contract shall be modified in writing accordingly. Any dispute as to whether the Contractor failed to act promptly to correct such conditions, or as to the reasonableness of the time for correction of such conditions, or as to such equitable adjustment, shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(4) In the event the Government's assumption of risk under this clause is terminated in accordance with (3) above, the risk of loss with respect to Government-furnished Property shall be determined in accordance with the clause of this contract, if any, entitled "Government-furnished Property" until the Government's assumption of risk is reinstated in accordance with (5) below.

(5) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government thereof. The Government may elect to again assume the risks and relieve the Contractor of liabilities as provided in this clause, or not, and the Contracting Officer shall notify the Contractor of the Government's election. If, after correction of the unreasonable conditions the Government elects to again assume such risks and relieve the Contractor of such liabilities, the Contractor shall be entitled to an equitable adjustment in the contract price for costs of insurance, if any, extending from the end of the third working day after the Contractor notifies the Government of such correction until the Government notifies the Contractor of such election. If the Government elects not to again assume such risks, and such conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for costs of insurance, if any, extending after such third working day.



(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of, such aircraft:

(i) resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open, and during operation, in accordance with sound industrial practice (the term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract);

(ii) sustained during flight if the flight crew members conducting such flight have not been approved in writing by The AFSC Contract Management Region Commander or his designee;

(iii) while in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished Property;

(iv) to the extent that such damage, loss or destruction is in fact covered by insurance;

(v) consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless such damage is the result of other loss, damage, or destruction covered by this clause; provided, however, in the case of Government-furnished Property, if such damage consists of reasonable wear and tear or deterioration, or results from inherent vice in such property, this exclusion shall not apply;

(vi) sustained while the aircraft is being worked upon and directly resulting therefrom, including but not limited to any repairing, adjusting, servicing or maintenance operation, unless such damage, loss, or destruction is of a type which would be covered by insurance which would customarily have been maintained by the Contractor at the time of such damage, loss, or destruction, but for the Government's assumption of risk under this clause; or

(vii) under this clause, where the total loss resulting from each event separately occurring is less than \$500.

(e) A subcontractor shall not be relieved from liability for damage to, or loss or destruction of, aircraft while in his possession or control, except to the extent that the subcontract, with the prior written approval of the Contracting Officer, provides for relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of such aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability for any damage, loss, or destruction of aircraft and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for such damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(f) The Contractor warrants that the contract price does not and will not include, except as may be otherwise authorized in this clause, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under the provisions of this clause, whether or not such assumption may be terminated as to aircraft in the open.

(g) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect such aircraft from further damage, separate damaged and undamaged aircraft, put all aircraft in the best possible order and, further, except in cases covered by (d)(vii) above, the Contractor should furnish to the Contracting Officer a statement of:

(i) the damaged, lost, or destroyed aircraft;

(ii) the time and origin of the damage, loss, or destruction;

(iii) all known interests in commingled property of which aircraft are a part; and

(iv) the insurance, if any, covering any part of the interest in such commingled property.

Except in cases covered by (d)(vii) above, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing his obligations under this paragraph (g) and this contract shall be modified in writing accordingly.

(h) If prior to delivery and acceptance by the Government any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of such damage, loss, or destruction, the Government shall either (1) require that such aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to such damage, or (2) shall terminate this contract with respect to such aircraft. In the event that the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and this contract shall be modified in writing accordingly. If, in the alternative, this contract is terminated under this paragraph with respect to such aircraft and under this clause the Government has assumed the risk of such damage, loss, or destruction, the Contractor shall be paid the contract price for said aircraft (or if applicable, any work to be performed on said aircraft) less such amounts as the Contracting Officer determines (1) that it would have cost the Contractor to complete the aircraft (or any work to be performed on said aircraft) together with anticipated profit, if any, on any such uncompleted work, and (2) to be the value, if any, of the damaged aircraft or any remaining portion thereof retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any remaining parts thereof; and, if any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due to the Contractor. Failure of the parties to agree upon an equitable adjustment or upon the amount to be paid in the event of termination of the contract with respect to any aircraft, shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(i) In the event the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under the provisions of this clause and for which the Contractor has been compensated by the Government, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

**B.31 AEROSPACE GROUND EQUIPMENT (AGE) SELECTION PROCEDURE** - Aerospace Ground Support Equipment (AGE) shall be selected in accordance with the following Document and/or Documents, which are specifically referred to elsewhere in this contract:

(a) Ground Support Equipment and Spare Parts Therefor Provisioning Document for United States Air Force Contracts identified as MCP 71-650 dated March 1959 and Amendment 1, dated 1 July 1960, hereby incorporated herein by reference, except that wherever the term "Ground Support Equipment" is used in the provisioning document it shall be deemed to mean "Aerospace Ground Equipment".

(b) For use in Phase III Contracts (production of operational inventory quantities) Aeronautical Systems Center Modification No. 1 (identified as ASC 71-1 dated Feb. 1960 hereby incorporated herein by reference) to MCP 71-650 and Amendment 1, Ground Support Equipment and Spare Parts Therefor Provisioning Document for United States Air Force Contracts dated March 1959.

(c) For use in Phase II Contracts (Development, fabrication and evaluation of test quantities) Aeronautical Systems Center Modification No. 1A (identified as ASC 71-1A dated Feb 1960 hereby incorporated herein by reference) to MCP 71-650 Ground Support Equipment and Spare Parts Therefor Provisioning Document for United States Air Force Contracts dated March 1959, except that the definition of "Procuring Contracting Officer" appearing in paragraph 2.a is revised to read:

"y. Procuring Contracting Officer. The term 'Procuring Contracting Officer' means the Contracting Officer at the Aeronautical Systems Division, Wright-Patterson Air Force Base, Ohio, who executed the Contract, any other Contracting Officer procuring supplies hereunder, or any of their successors."

**B.32 SPARE PARTS SELECTION PROCEDURE** - Spare Parts shall be selected in accordance with the following Document and/or Documents, which are specifically referred to elsewhere in this contract:

a. Spare Parts Provisioning Document for USAF Aeronautical and Associated Equipment Contracts dated July 1961, identified as MCP 71-673 and hereby incorporated herein by reference.

b. Spare Parts Provisioning Document for USAF Aeronautical and Associated Equipment Contracts - Follow-on contract application only dated July 1961, identified as MCP 71-674 and hereby incorporated herein by reference.



REPORTS OF WORK (Jul. 1960)

(a) The Contractor shall submit reports making full disclosure of all work done and the results thereof, in the manner, at the times, and to the extent set forth in the Schedule; provided that, unless otherwise specified in the Schedule, the Contractor shall submit such reports in triplicate from time to time as requested and upon completion (or earlier termination) of the work. Except as may be otherwise specified in the Schedule, or unless the Contractor is otherwise instructed, the Contractor shall, upon completion (or earlier termination) of the work, deliver any working drawings and specifications of any prototypes as may have been developed.

(b) If the Contractor becomes unable to complete the contract work and to deliver at the time specified in the Schedule because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in performance of the work, he shall give the Contracting Officer written notice of the anticipated delays with reasons therefor, not less than forty-five (45) days before the completion date specified in the Schedule or within such time as the Contracting Officer deems sufficient. When notice is so required, the Contracting Officer may, in his discretion, extend the time specified in the Schedule for such period as he deems advisable.

(ASPR 7-304.7 (7-404.6) (60 Ed.) Revised 22 July 1960 (Rev. No. 1) and is authorized for use in Research and Development Contracts only)

INSPECTION (JUN. 1959)

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(ASPR 7-302.4(b) and shall be used only in accordance with the requirements thereof. If this clause is applicable to this contract it shall be deemed to be substituted for the clause set forth under D-5 entitled "5. Inspection.")

APR 1960 4-1087

B.35

SMALL BUSINESS SUBCONTRACTING PROGRAM (FEB. 1962)

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall —

(1) Designate a liaison officer who will (i) maintain liaison with the Government on small business matters, (ii) supervise compliance with the "Utilization of Small Business Concerns" clause, and (iii) administer the Contractor's "Small Business Subcontracting Program."

(2) Provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions.

(3) Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of small business concerns. Where the Contractor's lists of potential small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(4) Maintain records showing (i) whether each prospective subcontractor is a small business concern, (ii) procedures which have been adopted to comply with the policies set forth in this clause, and (iii) with respect to the letting of any subcontract (including purchase orders) exceeding \$10,000, information substantially as follows:

- (A) Whether the award went to large or small business.
- (B) Whether less than three or more than two small business concerns were solicited.
- (C) The reason for non-solicitation of small business if such was the case.
- (D) The reason for small business failure to receive the award if such was the case when small business was solicited.

The records maintained in accordance with (iii) above may be in such form as the individual Contractor may determine, and the information shall be summarized quarterly and submitted by the purchasing department of each individual plant or division to the Contractor's cognizant small business liaison officer. Such quarterly summaries will be considered to be management records only and need not be submitted routinely to the Government; however, records maintained pursuant to this clause will be kept available for review.

(5) Notify the Contracting Officer before soliciting bids or quotations on any subcontract (including purchase orders) in excess of \$10,000 if (i) no small business concern is to be solicited, and (ii) the Contracting Officer's consent to the subcontract (or ratification) is required by a "Subcontracts" clause in this contract. Such notice will state the Contractor's reasons for non-solicitation of small business concerns, and will be given as early in the procurement cycle as possible so that the Contracting Officer may give the Small Business Administration timely notice to permit SBA a reasonable period to suggest potentially qualified small business concerns through the Contracting Officer. In no case will the procurement action be held up when to do so would, in the Contractor's judgment, delay performance under the contract.

(6) Include the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities.

(7) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's subcontracting procedures and practices that the Contracting Officer may from time to time conduct.

(8) Submit DD Form 1140 reports, in triplicate, to the Military Department that reviews his subcontracting program, except that where the Contractor elects to report on a corporate rather than a plant basis, he may submit his reports to the Military Department having industrial readiness planning responsibility at the corporate headquarters.

(b) A "small business concern" is a concern that meets the pertinent criteria established by the SBA and set forth in paragraph 1-701 of the Armed Services Procurement Regulation.

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(c) The Contractor agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting program, this contract may be terminated, in whole or in part, for default.

(d) The Contractor further agrees to insert, in any subcontract hereunder which is in excess of \$500,000 and which contains the "Utilization of Small Business Concerns" clause, provisions which shall conform substantially to the language of this clause, including this paragraph (d), and to notify the Contracting Officer of the names of such subcontractors; except that the subcontractor will submit the DD Form 1140 reports to the Military Department having industrial readiness planning responsibility or plant cognizance. (A subcontractor may request advice from the nearest military purchasing or contract administration activity as to the Military Department to which he should submit his reports.)

(ASPR 7-104.22, 7-204.19, 7-303.11 or 7-403.13 (60 Ed.) Revised 15 Feb. 1962 (Rev. No. 7) and is authorized for use in accordance with the instructions in ASPR 1-707.3(b)).

B-36

**SPECIAL PROVISIONS RELATING TO AIR FORCE EQUIPMENT UPON WHICH WORK IS TO BE PERFORMED. (JUN. 1959)**

(a) The Contractor's liability for Air Force equipment upon which work is to be performed by the Contractor pursuant to this contract shall be subject to the provisions of paragraph (f) and paragraph (e) as revised below, of the clause of this contract entitled "Government-Furnished Property." For the purpose of this clause, the following shall be substituted for paragraph (e) of the clause entitled "Government-Furnished Property": "Title to Air Force equipment furnished for repair or modification shall remain in the Government. The Contractor shall protect such equipment in accordance with sound industrial practice. The Government shall at all reasonable times have access to the premises wherein the Air Force equipment is located." However, such equipment shall not be considered Government-furnished property within the meaning and for the purposes of any other paragraph of that clause.

(b) The Contractor shall maintain adequate property control records of Air Force equipment furnished for repair or modification in accordance with the requirements of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Service Procurement Regulation) as in effect on the date of the contract, which manual is hereby incorporated by reference and made a part of this contract.

(Applicable if this is a definite quantity contract)

(c) In the event the Air Force equipment furnished for repair or modification is not delivered to the Contractor by the time or times specified in the schedule, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both and any other contractual provision affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(AFPI 7-4051 (60 Ed.) and is authorized for use in accordance with the instructions therein.)

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(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

- (i) all end items which constitute "Canadian end products" (as defined in paragraph 6-101 of the Armed Services Procurement Regulation) to be delivered under this contract; and
- (ii) all supplies (including, without limitation, raw materials, components and intermediate assemblies) produced or made in Canada which are to be incorporated in the end items to be delivered under this contract; provided, that such end items are made in the United States or Canada;

except supplies imported into the United States prior to the date of this contract, or, in the case of supplies imported by a first- or lower-tier subcontractor hereunder, prior to the date of his subcontract.

(b) The Contractor warrants that all such Canadian supplies, for which such duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof, (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of Canadian end products or supplies as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents submitted to Customs, covering such Canadian end products or supplies for which duty-free entry is to be claimed, shall bear the following information:

- (i) Government prime contract number;
- (ii) identification of carrier;
- (iii) the notation: "UNITED STATES AIR FORCE - DUTY-FREE ENTRY TO BE CLAIMED pursuant to Act of August 10, 1956 (10 U.S.C. 2383)." Upon arrival of shipment at port of entry, Collector of Customs, kindly notify the Commercial Traffic Office, Detroit Air Procurement District, 6233 Concord Avenue, Detroit 11, Michigan, who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate;
- (iv) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
- (v) estimated value in United States dollars.

(e) The Contractor agrees to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the Collector of Customs at the port of entry. The foreign supplier shall also be instructed to forward, at the time of shipment, a memorandum copy of the bill of lading (or other shipping document) to the designated Government representative.

(f) This clause shall not apply to purchases of Canadian supplies in connection with this contract if (i) such Canadian supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business, and (ii) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(g) The Contractor agrees to insert the substance of this clause, including this paragraph (g), in all subcontracts for supplies hereunder that exceed \$5,000. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

(ASPR 6-605.2 (60 Ed.) Revised 15 November 1961 (Rev. No. 6) and is authorized for use in accordance with the instructor therein.)

B.38 MATERIAL INSPECTION AND RECEIVING REPORT (JUL. 1958)

At the time of each delivery under this contract the Contractor shall prepare and furnish to the Government, in the manner and to the extent required by the Contracting Officer, a Material Inspection and Receiving Report (DD Form 250 or comparable form). The Government shall furnish the required forms to the Contractor upon request.

(ASPR 7-105.7 or 7-205.6 (60 Ed.) and is authorized for use in accordance with the instructions in AFPI 7-105.7)

B.39 FURNISHING OF PRICING INFORMATION (JAN. 1961)

(a) The Contractor shall furnish to the Accounting and Finance Officer as soon as practical, but in no event later than the time of delivery of the respective item, either on the DD Form 250, "Material Inspection and Receiving Report," or in such other written form as may be convenient for the contractor, its best estimate of the price of any item, (excluding complete aircraft and missiles, drawings, blueprints, technical reports, experimental, developmental or research items), for which a billing, estimated or firm price does not appear in the contract, or has not otherwise been furnished to the Contracting Officer prior to the time of delivery.

(b) The Contractor shall further indicate on each DD Form 250, submitted under this contract, the price of Government-Furnished Material (GFM) that is included in each line item covered by the respective DD Form 250.

(c) The Contractor shall include in each of its subcontracts under which deliveries may be made directly to the Government a provision whereby such subcontractor agrees to prepare and distribute the DD Form 250 and to enter thereon the price of all GFM included in items so delivered to the Government. The price of GFM will be made available to the contractor or subcontractor by the Government, as the case may be. No delivery shall be delayed by reason of the failure of the Government to furnish such prices to the contractor or subcontractor. The contractor shall require each subcontractor to include a similar provision in its subcontracts.

(AFPI 7-4061 (60 Ed.) issued 17 Jan. 1961 (Rev. No. 2) and is authorized for use in accordance with the instructions in AFPI 7-4061.)

FP & CR

B 40 PROGRAM PROGRESS REPORTING REQUIREMENTS (JAN. 1961)

Contractor agrees to submit those program progress reports as are specifically set forth in AFPI Form 21, "Specification of Program Progress Reporting Requirements," attached to this contract, and made a part thereof. Reports shall be prepared in accordance with instructions contained in AMC/ARDC Manual No. AMCM 70-5/ARDCM 70-1, "Handbook, Contractor Program Progress Reporting," and any amendments in effect on the date of this contract. Bureau of Budget Clearance No. 21-R125.1 applies.

(AFPI 7-4063 (60 Ed.) issued 17 January 1961 (Rev. No. 2) and is authorized for use in accordance with the instructions therein).

FP & CR

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B.41 STOP WORK ORDER (JUL. 1960)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either —

(i) cancel the stop work order, or

(ii) terminate the work covered by such order as provided in the "Termination for Convenience" clause of this contract.

(b) If a stop work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if —

(i) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract, and

(ii) the Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) If a stop work order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

(ASPR 7-105.8 or 7-304.6 (60 Ed.) issued 22 July 1960 (Rev. No. 1) and is authorized for use in accordance with the instructions therein).

FP

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B.42            PRICE REDUCTION FOR DEFECTIVE PRICING DATA (JAN. 1961)

(a) If the Contracting Officer determines that any price negotiated in connection with this contract was overstated because the Contractor, or any first-tier subcontractor in connection with a subcontract covered by (c) below, either (i) failed to disclose any significant and reasonably available cost or pricing data, or (ii) furnished any significant cost or pricing data which he knew or reasonably should have known was false or misleading, then such price shall be equitably reduced and the contract shall be modified in writing accordingly.

(b) Failure to agree on an equitable reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) The Contractor agrees to insert the substance of paragraph (a) of this clause in any of his subcontracts hereunder in excess of \$100,000, unless the price is based on adequate price competition, established catalogue or market prices, or prices set by law or regulation.

(ASPR 7-104.29 or 7-303.16 (60 Ed.) issued 31 January 1961 (Rev. No. 3) and is authorized for use in accordance with the instructions therein).

FP

B.43 LABOR SURPLUS AREA SUB CONTRACTING PROGRAM (Feb. 1962)

(a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall--

(1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the "Utilization of Concerns in Labor Surplus Areas" clause, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;

(2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

(3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;

(4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and

(5) Include the "Utilization of Concerns in Labor Surplus Areas" clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

(b) A "labor surplus area concern" is a concern which will perform, or cause to be performed, a substantial proportion of any contract awarded to it in "Areas of Substantial and Persistent Labor Surplus" or in "Areas of Substantial Labor Surplus," as designated by the Department of Labor. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area if the costs that the concern will incur on account of manufacturing or production (by itself or its first-tier subcontractors) in such areas amount to more than 50 percent of the price of such contract.

(c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of \$500,000 and which contains the clause entitled "Utilization of Concerns in Labor Surplus Areas," that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

(ASPR 1-805.3(b) (60 Ed.) issued 15 Feb. 1962 (ASPR Rev. No. 7) and shall be used only in accordance with the instructions therein).

FP & CR

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B.44 BASE SUPPORT

It is the intent of the parties that the Contractor will, so far as possible, avoid incurring costs in duplicating work capacity available at any Air Force installation involved in the performance of this contract. Therefore, the Contractor will utilize all available Government working space, equipment, supplies, materials and services (including communication services) at any Air Force base, installation or office where work under this contract is to be performed. Such items will be made available to the Contractor in reasonable amounts on a no-charge-for-use basis. The Contractor shall report any inadequacies or non-availability of the items referred to herein together with a recommended plan for obtaining the requested item to the Contracting Officer who shall promptly determine the validity and the extent of the requirement and the manner in which any approved requirement will be filled (as by purchase, rental, or lease). The Contractor shall not purchase or otherwise furnish any requirement under this clause without written approval of the Contracting Officer of the terms of the proposed purchase or other arrangement. Items of a capital nature shall not be purchased under the authority of this clause.

(Authorized for use in any contract (including a letter contract) wherein the Contractor may be required to perform any portion of the work at a military Base)

B.45 SECURITY REQUIREMENTS (For Use in Letter Contracts Only)

Pursuant to paragraph 5.b of "Industrial Security Manual for Safeguarding Classified Information", the Contracting Officer may modify Contractor's responsibilities for security with respect to any work being performed hereunder within the confines of a military installation. Such modification shall be transmitted to the Contractor by the Contracting Officer by amendment to this contract.

(Authorized for use in a letter contract wherein the Contractor may be required to perform any portion of the work within the confines of a military installation)

B.46 SECURITY REQUIREMENTS (Definitive Contract)

Pursuant to paragraph 5.b of "Industrial Security Manual for Safeguarding Classified Information", the Contracting Officer may modify Contractor's responsibilities for security with respect to any work being performed hereunder within the confines of a military installation. Such modification shall be transmitted to the Contractor by the Contracting Officer by written notice pursuant to the clause of this contract entitled "Changes". If such modification results in an increase or decrease of security costs under this contract, an appropriate increase or decrease of the contract price, the estimated cost, the fee (as applicable to this contract) hereunder shall be negotiated and evidenced by a supplemental agreement to this contract.

(Authorized for use in any definitive contract wherein the Contractor may be required to perform any portion of the work within the confines of a military installation)

B.47 CONTRACT NUMBER IDENTIFICATION ON DATA

Contractor agrees to mark the number of this contract on all Data delivered hereunder.

(AFPI 9-202.1(a)(5) (60 Ed.) and is authorized for use in accordance with the instructions therein)

B.48 SCHEDULE PROVISION RELATING TO THE CLAUSE HEREOF ENTITLED "DATA"

In the event the clause hereof entitled "Data" is incorporated in a contract the provisions of this clause shall be deemed to be incorporated in the Schedule of such contract.

Rights In Data

The rights obtained by the Government in Subject Data are set forth in the Data clause incorporated in this contract, and nothing elsewhere in this contract or in any documents incorporated by reference in this contract shall be construed as in any way altering such rights.

(This clause is authorized for use in accordance with the instructions in AFPI 9-202.1(b)(1) and AFPI 9-202.1(o)(4) (60 Ed.)

B.49 ~~RELEASE OF RESEARCH INFORMATION~~ Deleted - See page 50A

~~No news release, public announcement, denial or confirmation of same on any part of the subject matter of this contract or any phase of any program hereunder shall be made without the prior written approval of the Information Office, Office of the Deputy Commander for Aerospace Systems.~~

~~(Authorized for use only in contracts entered into by AFSC Ballistic Systems Division and AFSC Space Systems Division)~~

## B.49. RELEASE OF MANAGEMENT INFORMATION

With respect to work being performed under this contract, the contractor agrees that information requested of the contractor by Very Important Visitors as defined by AFSC Regulation 11-6, dated 16 January 1962, will be coordinated, wherever feasible, with the cognizant Air Force Plant Representative or his duly authorized representative.

## B.50 CERTIFICATE OF CONFORMANCE (AUG. 1961)

(a) At the option of the Government, any of the supplies or services to be furnished f.o.b. origin hereunder may be accepted without prior government inspection upon receipt of a Certificate of Conformance of the contractor attached to DD Form 250 for supplies or services reading substantially as follows:

"I hereby certify that I did, on the \_\_\_\_\_ (date) of \_\_\_\_\_ (month) 19 \_\_\_\_\_ ship via (Name of Carrier) on (Bill of Lading No., Receipt, etc.), in accordance with shipping instructions issued by the contracting officer, (the supplies called for by contract number (insert contract No.) . . . . .; that such supplies were in the quantities and of the quality called for, and were in all respects in accord with the applicable specifications) or (complete the services called for by Contract Number (insert contract number) . . . . .; item . . . . .; that such services were in the quantity and of the quality called for, and were in all respects in accord with applicable specifications). This statement is furnished to support payment of the attached invoice."

(b) Notwithstanding any provisions of the certificate above referred to, and notwithstanding the provisions of paragraph (c) of clause hereof entitled "Inspection", the liability of the Contractor with respect to supplies accepted by the Government under the provisions of paragraph (a) above will, after inspection by the Government or after the expiration of a reasonable time following delivery to the Government within which inspection may be made, whichever occurs first, be limited (except as to supplies rejected upon such inspection) to liability for latent defects, fraud, or such gross mistakes as amount to fraud.

(AFPI 7-4014 (60 Ed.) revised 8 August 1961 (AFPC No. 32) and is authorized for use in accordance with the instructions in AFPI 14-204.50).

1. The following provisions shall form a part of any Letter Contract incorporating the provisions of this Section C by reference.

2. All clauses of Section A of this Basic Agreement, excepting any clause entitled "Payment," and "Termination," are hereby incorporated into this Letter Contract by reference with the same force and effect as though hereinafter set forth in full. Reference in any of the clauses of Section A of this Basic Agreement to contract prices or adjustments in contract prices and delivery schedules, to the extent such are not included in this Letter Contract, shall be inapplicable, except that any adjustments in amounts finally payable to the Contractor, or in time of performance required by such clauses, shall be made either at the time of settlement of Contractor's termination claims or shall be taken into account at the time of execution of the definitive contract contemplated hereby.

3. By the Contractor's acceptance hereof, it undertakes, without delay, to enter into negotiations with the Department of the Army for the execution of a definitive contract which will include all of Section A of this Basic Agreement, and such other clauses as may be mutually agreeable. The definitive contract will also contain a detailed delivery schedule and prices, terms and conditions as agreed to by the parties which may or may not be at variance with the provisions of this order.

4. Termination. (a) In case a definitive contract is not executed by the date specified in the clause hereof entitled "Provision for Definitive Contract," because of the inability of the parties to agree upon a definitive contract, this order may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than thirty (30) days after receipt of such notice.

(b) The performance of work under this order may be terminated by the Government in accordance with this clause, in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under this order is terminated, and the date upon which such termination becomes effective.

(c) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall: (1) stop work under this order on the date and to the extent specified in the Notice of Termination; (2) place on file further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this order as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this clause; (6) transfer title to and deliver to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information, and other property which, if this order had been completed, would be required to be furnished to the Government, (iii) the Contractor's best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph. Provided, however, That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer. And provided further, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this order or shall otherwise be credited to the price or cost of work covered by this order or paid in such other manner as the Contracting Officer may direct, (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination, and (9) take such action as may be necessary or as the Contracting Officer may direct, for the protection and preservation of the property related to this order which is in the possession of the Contractor and in which the Government has or may acquire an interest. At any time after expiration of the plant clearance period, as defined in Section VIII of the Armed Services Procurement Regulation, or as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same. Provided, That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

(d) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly, but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to submit a termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

Subject to the provision of paragraph (d) hereof, and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts

to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) hereof, such amount or amounts shall not include any allowance for profit or fee. In the event of any termination pursuant to paragraph (b) hereof, such amount or amounts may include a reasonable allowance for profit or fee, but only on work actually done in connection with the terminated portion of this order. Any such amount shall not exceed the amount set forth in the clause hereof entitled "Authority to Obligate Funds." Any such agreement shall be embodied in an amendment to this order and the Contractor shall be paid the agreed amount.

(f) If the Contractor and the Contracting Officer are not able to agree in whole or in part, as provided in paragraph (e) hereof, as to the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer without duplication of any amounts agreed upon in accordance with the above-cited paragraph (e), shall subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract pay to the Contractor an amount determined in accordance with the applicable cost principles of the Armed Services Procurement Regulation. In the event of the termination of this order pursuant to paragraph (a) hereof, no allowance for fee or profit shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the clause entitled "Disputes" incorporated in this order by reference, from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any dispute as to whether termination has in fact taken place pursuant to paragraph (a) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) hereof and has failed to request extension of such time, the Contractor shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due to the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments, and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand together with interest computed at the rate of 6% per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: Provided, however, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition.

(j) Unless otherwise provided in this contract or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this order, shall preserve and make available to the Government, at all reasonable times at the office of the Contractor without direct charge to the Government, all books, records, documents, and other evidence bearing on the cost and expenses under this order and relating to the work terminated, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof

5. PAYMENT FOR OVERTIME AND SHIFT PREMIUMS.—(Feb. 1962)—The contract price shall not include any amount on account of overtime premiums or shift premiums, except to the extent that they either (i) are approved in writing on behalf of the Government or (ii) are paid for work—

(A) necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(B) by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(C) in the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed, or

(D) which result in lower overall cost to the Government.

(ASPR 12-102.3 (60 Ed.)) revised 15 Feb. 1962 (Rev. No.7)



This Section D shall be deemed to be incorporated in and form a part of every contract placed by the United States Air Force with the Contractor whenever such instrument or document states that this Section D of this Basic Agreement applies:

D-1. Clause 1—Definitions of Section A—is hereby amended by inserting therein the following paragraph:

"(f) The term 'contract work' means all work to be performed under this contract including without limitation any studies covering fundamental, theoretical, or experimental investigations; any extension of the investigative findings and theories of a scientific or technical nature into practical application; any tangible items, hereinafter referred to as 'supplies,' furnished to the Government; and any reports, data, computations, plans, drawings and specifications with respect to any of the foregoing." (Oct. 1957) (AFPI 7-302.1)

D-2. Clause 2—Changes of Section A—is hereby deleted and the following clause substituted in lieu thereof:

"2 CHANGES. (Jun. 1959)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, (ii) method of shipment or packing, (iii) place of inspection, delivery, or acceptance, and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed."

(ASPR 7-304.1) (60 Ed.)

D-3. Clause 3—Extras of Section A—is hereby deleted.

D-4. Clause 4—Variation in Quantity of Section A—is hereby deleted.

D-5. Clause 5—Inspection of Section A—is hereby deleted and the following clause substituted in lieu thereof:

"5 INSPECTION (Jun. 1959)

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work, the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled 'Disputes.'

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract."

(ASPR 7-302.4(a)) (60 Ed.)

D-6. Responsibility for Supplies of Section A—is applicable if this contract provides for the delivery of end items other than designs, drawings, or reports.  
(AFPI 7-303.55)

D-7. Clause 7—Payments of Section A—is hereby deleted and the following Clause substituted in lieu thereof:

"7. PAYMENTS. (Jun. 1959)

The Contractor shall be paid, upon submission of proper invoices or vouchers, the prices stipulated herein for work delivered or rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract."

(ASPR 7-302.2) (60 Ed.)

D-8. Clause 9—Additional Bond Security of Section A—is hereby deleted.

D-9. Clause 11—Default of Section A—is hereby deleted and the following clause substituted in lieu thereof:

~~"11. DEFAULT. (Nov 1961)~~ (Jul 1962)

(a) The Government may, subject to the provisions of paragraph (b) of this clause, by written Notice of Default to the Contractor terminate the whole or any part of this contract in any one of the following circumstances:

(i) if the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or

(ii) if the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or service to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirements.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, work similar to the work so terminated and the Contractor shall be liable to the Government for any excess costs for such similar work, provided that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer any of the completed or partially completed work not theretofore delivered to, and accepted by, the Government and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price, if separately stated, for completed work accepted by the Government and the amount agreed upon by the Contractor and the Contracting Officer for (i) completed work for which no separate price is stated, (ii) partially completed work, (iii) other property described above which is accepted by the Government and, (iv) the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

~~(e) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause it is determined that the failure to perform this contract or to prosecute the work so as to endanger performance of the contract is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of paragraph (c) of this clause, such Notice of Default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause.~~

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract."  
(ASPR 7-302.9 (8-710) (60 Ed.)) revised 30 July 1962 (Rev. No. 10)

D-10. Clause 33—Additional Inspection Requirements of Section A—is hereby deleted.

D-11. Standards of Work. (Jun. 1959)

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

(ASPR 7-302.3) (60 Ed.)

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause.

## AND MODIFICATION CONTRACTS

This Section E shall be deemed to be incorporated in and form a part of every contract placed by the United States Air Force with the Contractor whenever such instrument or document states that this Section E of this Basic Agreement applies:

F-1. Clause 2--Changes--of Section A is hereby deleted and the following clause substituted in lieu thereof:

"2. **CHANGES.** (Jun. 1958)--The Contracting Officer may, at any time, by a written order, and without notice to the sureties, if any, make changes in or additions to specifications, issue additional instructions, require modified or additional work or services within the general scope of the contract, or change the place of delivery or method of shipment or packing, or the amount of Government furnished property. If any such change causes an increase or decrease in the cost of, or in the time required for, performance of this contract, an equitable adjustment shall be made in the contract price or the time of performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as the result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled 'Disputes.' However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed." (AFPI 7-4503:2 (60 Ed.))

E-2 and E-3. Clause 3--Extras--and Clause 4--Variation in Quantity--of Section A are hereby deleted.

E-4. Clause 5--Inspection--of Section A is hereby deleted and the following clause substituted in lieu thereof:

"5. **INSPECTION.** (Jan. 1960)--(a) The Contractor agrees that he will employ only qualified and competent employees in the performance of this contract, and that any items delivered under this contract will conform to the requirements of this contract and will not be defective in workmanship or material. The Contractor shall not be responsible for latent defects in Government furnished Property.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, and the work and services hereunder. Records of all inspection work by the Contractor shall be complete and available to the Government at all reasonable times during performance of this contract and for such longer period as may be specified in the contract. The Contractor shall inform the Inspector or Contracting Officer when the work is ready for inspection. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when items are not ready at the time such inspection and test is requested by the Contractor.

(c) All services, material and workmanship shall be subject to inspection and test by the Government to the extent practicable at all times and places including the period of performance and in any event prior to final acceptance. Final inspection and acceptance by the Government of all the items (other than aircraft to be flown away, if any) to be furnished under this contract shall be at the plant or plants of the Contractor specified in the Schedule, or any other plant or plants approved for such purpose in writing by the Contracting Officer. The Contractor shall request any approval of such plant or plants as soon as practicable so as to permit the Government to make necessary arrangements for inspection and acceptance, and the Government is not obligated to make such final inspection and acceptance at any point so approved until a reasonable period after the date of such approval. The Contractor shall allow, at all reasonable times and places, Government inspectors and other personnel free access to the plant or plants and operations of the Contractor or any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premise of the Contractor or a Subcontractor, the Contractor without additional charge shall provide and shall require Subcontractors to provide, all reasonable facilities and assistance as may be required for this work and for the safety and convenience of the Government personnel. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work.

(d) The Government shall have the right to reject any parts or materials which are not in conformity with the requirements of this contract, or are otherwise defective in workmanship or material, or which are unsuited for the purpose intended, and require correction or replacement thereof at no additional charge to the Government. Corrected item or items tendered as replacements shall be subject to the provisions of this clause in the same manner and to the same extent as items originally tendered, and shall not be tendered for acceptance unless the former rejection and requirement for correction or replacement is disclosed. If the Contractor fails to proceed with reasonable promptness to replace or correct such rejected items, the Government (i) may by contract or otherwise replace or correct such items and charge to the Contractor any increased cost occasioned the Government thereby, or (ii) terminate this contract for default as provided in the clause of this contract entitled 'Default'.

(e) The inspection and test by the Government of any work or items does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to final acceptance. Except as otherwise provided in this contract, final acceptance shall be conclusive except as regards latent defects, fraud or such gross mistakes as amount to fraud.

(f) Unless otherwise provided herein, if any aircraft are required to be furnished to the Government hereunder and the same are to be flown away, such aircraft shall be finally inspected and accepted by the Government at a flying field or fields to be approved by the Contracting Officer in the vicinity of the Contractor's plant or plants specified in the Schedule or at such other point as may be requested by the Contractor and approved for such purpose in writing by the Contracting Officer.

(Applicable if this contract provides for separate reimbursement of parts or materials)

(g) Acceptance of parts or materials acquired by the Contractor for the Government as provided in the Schedule for separate reimbursement may be deferred until final item inspection. Notwithstanding the provisions in paragraph (d) above, in the event of defects in the item due to such parts or materials, the Government will pay the cost of replacement parts or materials, but the Contractor will bear the cost of replacement." (AFPI 7-4503.3 (60 Ed.))

E-5. Clause 7--Payments--of Section A is hereby deleted and the following clause substituted in lieu thereof:

"7. PAYMENTS. (June 1958)--The Contractor shall be paid, upon the submission of invoices or vouchers, the prices stipulated herein for repaired, overhauled, or modified items which have been delivered and accepted hereunder, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payments would equal or exceed either \$1,000 or fifty percent (50%) of the total amount of this contract.

(If this contract provides for separate reimbursement of parts or materials, the above paragraph shall be designated (a) and the following paragraphs added)

(b) To the extent that the provisions of the Schedule provide for reimbursement to the Contractor for costs of parts and materials, the Government shall pay to the Contractor such costs as are determined by the Contracting Officer to be allowable in accordance with Part 2, Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract, subject to such further definition and limitations as may be included in the Schedule of this contract, and in accordance with the following:

(1) Only the cost of direct materials as defined in the Schedule hereof shall be allowable costs. Except as otherwise may be specified in the Schedule, allowable costs of direct material shall include only those costs which under the Contractor's established accounting procedure would be properly shown as value of inventory if such materials had been procured by the Contractor independently of this contract. Costs of purchasing, inventory handling, or other indirect and administrative expense will not be reimbursable as a cost of direct materials.

(2) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to the Contracting Officer in such form and reasonable detail as required, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute Allowable Cost. Each statement of cost shall be certified by an officer or other responsible official of the Contractor authorized by it to certify such statements.

(3) As promptly as may be practicable after receipt of each invoice or voucher and statement of cost, the Government shall, except as hereinafter provided and subject to the provisions of paragraph (4) below, make payment thereon as approved by the Contracting Officer.

(4) At any time or times prior to final payment under this contract the Contracting Officer may cause to be made such audit of the invoices or vouchers and statements of cost as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts included in the related invoice or voucher and statement of cost which are found by the Contracting Officer on the basis of such audit not to constitute Allowable Cost, and shall also be subject to reduction for overpayments or to increase for underpayments on preceding invoices or vouchers. On receipt of the voucher or invoice designated by the Contractor as the 'completion voucher' or 'completion invoice' and statement of cost, which shall be submitted by the Contractor as promptly as may be practicable following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may, in his discretion, approve in writing) from the date of such completion, and following compliance by the Contractor with all provisions of this contract (including, without limitation, provisions relating to patents and the provisions of paragraphs (5) and (6) of this clause), the Government shall as promptly as may be practicable pay any balance of Allowable Cost.

(5) The Contractor and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract shall execute and deliver at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor.

(B) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the contract relating to patents.

(6) The Contractor agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by the Contractor or any assignee which arise out of the performance of this contract and on account of which the Contractor has received reimbursement shall be paid by the Contractor to the Government. The Contractor and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract shall execute and deliver at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of refunds, rebates, or credits (including any interest thereon) arising out of the performance of this contract, in form and substance satisfactory to the Contracting Officer. Reasonable expenses incurred by the Contractor for the purpose of securing any such refunds, rebates or credits shall constitute Allowable Cost when approved by the Contracting Officer.

(7) If at any time the Contractor has reason to believe that costs reimbursable under this Contract which it expects to incur in the next succeeding thirty (30) days, when added to all such costs previously incurred, will exceed eighty-five per cent (85%) of the amount then set forth in the Schedule as the estimated cost for the reimbursable elements, or, if at any time the Contractor has reason to believe that the total of such reimbursable costs will be substantially greater or less than the amount then set forth in the Schedule as the estimate of such reimbursable costs, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimated total of such reimbursable costs.



estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under this contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of the cost-reimbursement elements of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost." (AFPI 7-4503.4 (60 Ed.))

E-6. Clause 23—Termination for Convenience of the Government—of Section A is hereby amended as follows:

(a) By inserting a "period" after the word "determined" in the sixth line of paragraph (e), by deleting the words "as follows" and by deleting sections (i), (ii) and (iii) of paragraph (e).

(b) If this contract provides for separate reimbursement of parts or materials paragraph (d) is amended to read as follows:

"(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect, as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done, provided the contract terms do not otherwise prohibit the allowance of profit on any items thereunder, and provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise interfere or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d)." (AFPI 7-4503.15 (60 Ed.))

E-7. Clause 24—Government-Furnished Property—of Section A is amended if this Contract provides for separate reimbursement of parts or materials (i) the title of this clause is changed to read "Government Property," (ii) the phrase "Government-Furnished Property" wherever it appears in paragraphs (d), (e), and (f) is changed to read "Government property," and (iii) paragraph (c) is deleted and the following substituted in lieu thereof:

"(c) Title to the Government-furnished Property shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever occurs first. All Government-furnished Property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personally by reason of affixation to any realty. The Contractor shall comply with the provisions of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation) as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract." (ASPR 13-507 (60 Ed.) issued 15 Feb. 1962 (Rev. No. 7))

E-8. Clause 25—Subcontracts—of Section A is hereby deleted and the following clause substituted in lieu thereof:

"25. SUBCONTRACTS FOR WORK OR SERVICES.—(Does not apply if Clause A.26 is applicable.)—No contract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted for without the written approval of the Contracting Officer, but this provision will not be taken as requiring the approval of contracts of employment between the Contractor and personnel assigned for services thereunder." (AFPI 7-4504 (7-4030(b) (60 Ed.))

E-9. (Applicable if this contract provides for separate reimbursement of parts or materials and the costs thereof are to be determined according to ASPR Section XV, Part 2.)

RECORDS. (Apr. 1962) (a) (1) The Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. The Contractor's accounting procedures and practices shall be subject to the approval of the Contracting Officer; provided, however, that no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the costs properly applicable to this contract are readily ascertainable therefrom.

(2) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below any of the records for inspection, audit or reproduction by any authorized representative of the Department or of the Comptroller General.

(3) In the event the Comptroller General or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within two years after reimbursement of charges covered by any such voucher, to such representatives as may be designated for that purpose through the Contracting Officer such documentary evidence in support of transportation costs as may be required by the Comptroller General or any of his duly authorized representatives.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available his records (i) for a period of three years from the date of final payment under this contract, and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the Disputes clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in subparagraph (4)(B) above, the Contractor may in fulfillment of his obligation to retain his records as required by this clause substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a)(6) above, a provision to the effect that the subcontractor agrees that the Comptroller General or the Department, or any of their duly authorized representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract," as used in this paragraph (b) only, excludes (i) purchase orders not exceeding \$2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(If this clause is applicable to this contract Clause 10—Examination of Records—and Clause 27—Inspection and Audit—of Section A shall be deemed to be deleted.) (AFPI 7-4505.1 (60 Ed.))